Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States

RAYMON BLEDSOE SR.

Petitioner,

v.

NUCOR YAMATO STEEL COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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January 28, 2002

7688

QUESTIONS PRESENTED

Whether the Lower Courts holding on summary judgement conflicts with this Court and, *Anderson v. Liberty Lobby Inc.*

Whether the Eight Circuits holding conflicts with the Congressional intent of the statutory scheme of the EEOC and Title VII of the Civil Rights Act of 1964.

Whether the Eight Circuits holding conflicts with this Courts interpretation of the 180 day limitations period for filing a charge.

Whether the Eighth Circuits holding on the 180 day limitations period conflicts with this Court and decisions of the Eighth Circuit as it relates to the doctrine of stare decisis.

Whether the Eighth Circuits holding on equitable tolling creates a Constitutional question as it relates to the Fourteenth Amendment and equal access to the law.

Whether the Eighth Circuits holding on Arkansas State Law claims conflict with this Court , the Arkansas Supreme Court and Arkansas Law.

PARTIES TO THE PROCEEDING

The petitioner in this case is Raymon Bledsoe Sr.

The respondent is Nucor Yamato Steel Company.

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PETITION FOR A WRIT OF CERTIORARI

Raymon Bledsoe Sr., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Order granting Summary Judgement of the United States District Court for the Eastern District of Arkansas Western Division is unreported.[1]

The decision of the Court of Appeals opinion is reported at 2001 WL 987540 (8th Cir.(Ark)).[2]

The Order denying Reconsideration and Rehearing En Banc is unreported.[3]

JURISDICTION

The judgement of the court of appeals was entered on August 30, 2001, and a timely petition for rehearing was denied on October 30, 2001. This Court's jurisdiction rests on 28 U. S. C. § 1254(1).[4]

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Civil Rights Clause provides that:

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1. See Appendix A at 1a through 8a.

2. See Appendix B at 9a through 14a.

3. See Appendix D at 21a.

4. See Appendix E at 22a through 23a.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., Amendment XIV, Sec. 1. The enforcement provisions of the EEOC provides in relevant part that;

> (e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system.
> (f) jurisdiction and venue of the United States courts
> 42 U. S. C. § 2000e-5(e) and (f)[5]

STATEMENT OF THE CASE

This is a job discrimination employment case as it relates to 42 U.S.C. § 2000e and Title VII of the Civil Rights Act of 1964 with discrimination so extensive that a claim of vicarious liability under the doctrine of respondeat superior for tort of outrage was entered. The petitioner, Raymon Bledsoe Sr. who is black was employed by the respondent Nucor Yamato Steel Company from June of 1992 until July of 1998.

During the course of his employment, petitioner experienced numerous unlawful employment practices as it relates to the *EEOC Compliance Manual* and Title VII of the

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5. See Appendix F at 24a.

Civil Rights Act of 1964.[6] The unlawful employment acts of respondent were supported by documented personal diary notes of petitioner and certified letters from petitioner to respondent during the course of his employment. Psychological evaluations from respondent's company psychologist gave even more to support petitioners state of mind as it relates to discrimination during the course of his employment. Complaints from petitioner were met with retaliation. The last act took the form of discharge by respondent when petitioner prior to termination, requested that he be allowed to exercise the final step of respondent's company complaint procedure.[7]

After discharge, petitioner proceeded to file a charge of discrimination against respondent which was delayed by the administrative dereliction of the EEOC. Petitioner filed suit in U. S. District Court for the Eastern District of Arkansas, Jonesboro Division which entered summary judgement in favor of respondent. The District Courts ruling regarding the doctrine of equitable tolling conflicted with relevant cases of this Court and the Eighth Circuits. Petitioner appealed the District Courts decision to the Eighth Circuit Court of Appeals which ruling affirmed the District Courts ruling.

Petitioner filed for petition for rehearing en banc and petition for rehearing by the panel stating that the Eighth Circuits ruling would allow the EEOC to circumvent the administrative responsibilities delegated to it by Congress and that such abuses of the EEOC speak to the Public

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6. See Appendix J at 35a through 47a and Appendix O at 94a through 101a.

7. See Appendix G at 29a.

Interest.[8] The petition for rehearing en banc and the petition for rehearing by the panel were denied without remarks.

The decisions below rest on erroneous views which are in conflict with and contravene the Congressional intent of 42 U.S.C. §2000e-5(e) and (f) as it relates to this Courts interpretation of the 180 day "limitations period" in *Zipps v. Transworld Airlines, Inc.*, 455 U.S. 385, 393, 102 S. Ct. 1127, 1132-33 71 L. Ed. 2d. 234 (8th Cir. 1982) and other relevant Eighth Circuit decisions which have followed. The Eighth Circuits ruling in this instance throws the law governing equitable tolling into complete confusion and it is critically important for the Courts and litigants to know whether the Eighth Circuits decision is right or wrong as it raises important questions of law warranting this Court's plenary review or summary reversal for discovery and trial.

BACKGROUND

1. *Nucor Yamato Steel Company and Mr. Bledsoe.* In June of 1992, Mr. Raymon Bledsoe Sr. began his 6(six) year employment with Nucor Yamato Steel Company.

During the six year employment with Nucor Yamato Steel company, Mr. Bledsoe acknowledged to Plant Manager Dan DiMicco his desire for a management position. Annual and sometimes semiannual meetings requested by Mr. Bledsoe with Mr. DiMicco were conducted to reaffirm his desire for a management position and to see how he measured up. However, Mr. Bledsoe's quest to rise from his position as second helper on the furnaces was met by numerous adverse actions as it relates to testing in the promotion process and ultimately wrongful termination. In

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8. See Appendix C at 18a through 19a.

spite of the discriminatory actions of employees of Nucor Yamato Steel Company, Mr. Bledsoe made substantial contributions to the operations of the company.

However, on July 02, 1998, Mr. Bledsoe was terminated from his employment with Nucor Yamato Steel Company by Melt Shop Manager-Mike Gurley. The Nucor Yamato Steel Company had received certified letter #280 309 912 from Mr. Bledsoe addressed to Mr. Gurley on June 30, 1998 [9] which referenced harassment and other discriminatory actions by employees of Nucor Yamato Steel Company.

In terminating Mr. Bledsoe, Nucor Yamato Steel Company violated the fourth step of its company complaint procedure which allows employees to submit matters regarding misunderstandings or complaints concerning work conditions, procedures, policies or anything relative to work to the President of the Company.[10] Mr. Bledsoe's termination also limited access to the internal grievance procedure of Nucor Yamato Steel Company. It is clear that Mr. Bledsoe was engaged in protected activity as it relates to 42 U.S.C. § 2000e-3(a) and that Nucor Yamato Steel Company not only violated its company complaint procedure but in an adverse action, also retaliated against Mr. Bledsoe for his engagement in the protected activity.

This violation of the company complaint procedure does not represent an isolated incident and nor does the discriminatory actions of Mike Gurley as a department manager, as Mr. Bledsoe also experienced discrimination from the 2 (two) predecessors of Mr. Gurley, John Beaton and

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9. See Appendix G.

10. See Appendix J at 44a through 45a.

John Bell[11] whose actions represent a pattern of discrimination which is a claim of Mr. Bledsoe's in his First Amended Complaint.

The lack of diligence on the part of Nucor Yamato Steel Company to respond to or correct harassment by supervisor Glenn Wayne Brown which was complained of by Mr. Bledsoe created a hostile working environment so extreme that it caused Mr. Bledsoe to experience emotional distress and an injured shoulder.

On July 02, 1998, Nucor Yamato Steel Company terminated Mr. Bledsoe rather than correct or prevent the adverse employment actions that he complained of.

2. *The Equal Employment OpportunityCommission (E.E.O.C.) and Mr. Bledsoe.* On August 6, 1998, Mr. Bledsoe contacted the Little Rock office of the E.E.O.C. Mr. Bledsoe completed the charge information form and returned to the Little Rock E.E.O.C which transferred the case to the Memphis, TN. office. The Memphis office contacted Mr. Bledsoe by letter requesting time for an interview.

On September 15, 1998, Mr. Bledsoe contacted the Memphis office by telephone and after a 10 minute conversation with investigator Christine Wilson, she indicated that based upon the information provided the E.E.O.C. would not represent him in legal proceedings against Nucor Yamato Steel Company.

Dissatisfied with the telephone interview, Mr. Bledsoe mailed letter to the Little Rock office of the E.E.O.C. on

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11. See Appendix J at 35a through 37a.

October 27, 1998[12] requesting information regarding findings from the E.E.O.C. that would allow him to seek the necessary avenues to litigate the case and a request for reconsideration. The Little Rock office received the letter from Mr. Bledsoe on October 28, 1998, 60(sixty) days prior to the 180 day limitation for filing a charge which expired on December 29, 1998.

Since the Little Rock office of the E.E.O.C. had not responded to the first element of his request, Mr. Bledsoe believed that the E.E.O.C was addressing the second element which was reconsideration. However, it was not until after Mr. Bledsoe mailed a second letter on January 29, 1999[13] relating back by referencing the October 28, 1998 letter and the elements of it and the Little Rock office of the E.E.O.C. responded by mailing charge information Form 5 on February 5, 1999. Mr. Bledsoe proceeded to file a charge of discrimination of March 8, 1999.

Concerned about the dereliction and inconsistencies of both E.E.O.C. offices in its failure to properly investigate his claims, on June 01, 1999, Mr. Bledsoe with the use of the *E.E.O.C. Compliance Manual* presented credible information in support of his claims of discrimination against Nucor Yamato Steel Company.[14]

In defiance and considering the June 1, 1999 as request for reconsideration, Ms. Kay Klugh, the Area Director of the Little Rock office, response was that she would not reconsider

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12. See Appendix H at 32a.

13. See Appendix I.

14. See Appendix J.

the issuance of the Notice of Right to Sue[15] as she tried to mislead Mr. Bledsoe into believing that he had missed the 90(ninety) day deadline to file suit.

Mr. Bledsoe's final correspondence with the E.E.O.C. was by letter dated June 14, 1999 correcting Ms. Klugh on the miscalculation on the filing deadline and other occurrences which led Mr. Bledsoe to believe that an obstruction of justice had been committed by the E.E.O.C.[16]

3. *The District Court Proceeding.* Mr. Bledsoe filed his initial complaint of discrimination against Nucor Yamato Steel Company on June 03, 1999 in the United States District Court Eastern District of Arkansas, Jonesboro Division on a file form provided by the court entitle Complaint Under Title VII of the Civil Rights Act of 1964. A motion for leave to file amended complaint, stating damages, specified amounts for relief and included agents or employees of Nucor Yamato Steel Company under the theory of respondeat superior was filed on November 19, 1999 . The District Court Order on December 09, 1999 granted Mr. Bledsoe's leave to filed to file amended complaint with no objections from Nucor Yamato Steel Company. Nucor Yamato Steel Company later filed an objection to the amended complaint on December 20, 1999. Mr. Bledsoe filed additional motions for leave to file second amended complaint for regarding Arkansas State Law claims for 1) joint tortfeasors 2) retaliation 3)suppression and spoilation of evidence and additional monetary damages for defamation of character all of which were denied by the District court.

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15. See Appendix K.

16. See Appendix L.

On September 11, 2000, Mr. Bledsoe filed a motion to compel Nucor Yamato Steel Company to comply with discovery.[17] September 12, 2000, Nucor Yamato Steel Company entered motion for summary judgement. Mr. Bledsoe, without the benefit of discovery, filed objection to summary judgement on September 29, 2000[18] challenging the elements the summary judgement citing relevant evidence, the *E.E.O.C Compliance Manual*, Arkansas Case Law, Arkansas Supreme Court decision, Eighth Circuit and relative decisions from other circuits, federal statutes and relevant decisions of this Court. Contrary to the Eighth Circuits statement of a "full hearing" there was none.

The district court granted Nucor Yamato Steel Company's motion for summary judgement on October 23, 2000 finding Mr. Bledsoe's motion to compel moot. The district court judge cited *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir.), *cert. denied*, 516 U.S. 913 (1995) as a basis for his denial of equitable tolling in Mr. Bledsoe's case misapplying the Eighth Circuits decision on equitable tolling.

4. *The Court of Appeals' Decision.* On November 21, 2000, Mr. Bledsoe filed a notice of appeal to the Eighth Circuit Court of Appeals from District court stating 5(five) issues in which the District court was in error. Mr. Bledsoe filed appellant brief challenging the summary judgement ruling of the district court. Nucor Yamato Steel Company filed its appellee brief and Mr. Bledsoe responded by filing a reply brief.

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17. Discovery was delayed by Nucor Yamato Steel Company for 8 months. See Appendix M at 58a and Appendix N at 71a.

18. See Appendix O.

The Eighth Circuit affirmed the district courts opinion citing *DeBrunner v. Midway Equip. Co.*, 803 F. 2d 950, 952 (8th Cir. 1986) and *Shempert v. Harwick*, 151 F. 3d 793, 797 (8th Cir. 1998) *cert. denied*, 525 U.S. 1139 (1999) (citation omitted) which Mr. Bledsoe stated in his petition for rehearing,[19] have no direct application to his case which brings the before this Court the question as to whether the Eighth Circuit properly applied the doctrine of *stare decisis* in this instant.

In his petition for rehearing which was timely filed on September 11, 2001, Mr. Bledsoe also cited the Eighth Circuit precedent *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir. 1995) as a case that directly applied to his case regarding equitable tolling.

Mr. Bledsoe went on to state that the Eighth Circuits ruling raised a questions of exceptional importance regarding equitable tolling, Congressional intent as it relates to the E.E.O.C. and summary judgement ruling in civil rights actions.[20] The petition for rehearing was denied on October 30, 2001without comment.

REASONS FOR GRANTING THE WRIT

Nucor Yamato Steel Company attempted to prevent Mr. Bledsoe from exercising his Fourteenth Amendment right of "equal access" to the Courts by contravening case law and regulatory statutes regarding equitable tolling in this instant. In spite of the evidence presented by petitioner, Nucor Yamato Steel Company has maintained that the Equal Employment Opportunity Commission (EEOC) is not

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19. See Appendix C at 15a through 17a.

20. See Appendix C at 18a through 19a.

responsible for lulling Mr. Bledsoe into inactivity by missing the 180 day deadline for filing a charge of discrimination. However, the real tragedy in this case is that Nucor Yamato Steel Company has known since the beginning of this litigation that "the EEOC failed to comply with its statutory duty to investigate and attempt to resolve the allegations in accordance with Title VII of the Civil Rights Act of 1964, as amended."[21]

The Eighth Circuit has held in this instant that it is permissible for the EEOC not to respond to claimants requests for reconsideration of their claims of discrimination.

This holding if allowed to stand would completely circumvent the Congressional intent of the EEOC in its responsibilities to resolve issues of discrimination. This decision is flatly inconsistent with Eighth Circuit precedents concerning equitable tolling which relate to this case. It is squarely in conflict with this Courts interpretation of the 180 day filing period as a statute of limitations and the spirit of the doctrine of equitable tolling.

If permitted to stand, the Eighth Circuits ruling in this instant, would prevent future claimants from having their day in court. This decision would have an even more devastating affect in states such as Arkansas where the EEOC is the only avenue to administer federal issues of discrimination. Claimants such as petitioner would be not only be wronged once by their employer for discrimination but also wronged twice by the federal agency whose assigned task is that of investigating claimants charges of discrimination presenting a Constitutional question of great importance.

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21. See Appendix P at 110a to 111a.

The improper adjudication of claims presented to the Eight Circuit is the final reason why this writ should be granted.

I.

THE LOWER COURTS HOLDING ON SUMMARY JUDGEMENT CONFLICTS WITH THIS COURT AND *ANDERSON v. LIBERTY LOBBY, INC.*

The district court entered summary judgement in favor of Nucor Yamato Steel Company basing its standard for summary judgement upon the Supreme Court established guidelines of *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)[22] to assist it in determining whether the standards for summary judgement had been met. The threshold inquiry is utilized in determining whether there is a need for trial. However, when one examines the direct evidence presented to the district court as it relates to the administrative dereliction of the EEOC as well as the elements of *Anderson*, 477 U.S. 242, upon which this Court based the inquiry threshold, the district courts ruling for summary judgement fails. The threshold is based upon the following elements;

> 1. "Summary judgement will not lie if the dispute about a fact is "genuine," i.e., if the evidence is that a reasonable jury could find a verdict for the nonmoving party."
>
> 2. "Credibility determinations, weighing of evidence, and drawing of legitimate inferences from the facts

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22. See Appendix A at 3a through 4a.

are jury functions, not those of a judge,[23] whether his ruling is on motion for summary judgement or for directed verdict; evidence of the nonmovant is to be believed and all justifiable inferences[24] are to be drawn in his favor. Fed. Civil. Proc. Rule 50(a)56(c), 28 U.S.C.A

3. "Plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgement, even where the evidence is likely to be within the possession of the defendant, as long as plaintiff has had a full opportunity to conduct discovery. Fed. Rules Civ. Proc. Rule 56 (c), 28 U.S.C.A.

The reexamination of relevant direct evidence will demonstrate that the district court did not meet the criteria set fourth in elements (1) and (2). The district court also failed element (3) when it stayed Mr. Bledsoe's motion to compel discovery as *Stanback v. Best Diversified Product, Inc.*, 180 F. 3d. 903 (8th Cir. 1999) which states "although discovery does not have to be completed before Court can grant summary judgement, summary judgement is proper only after nonmovant has had adequate time to engage in discovery.

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23. Rule 56(a)-(c) was cited in Mr. Bledsoe's Opposition to Motion for Final Summary Judgement. See Appendix O at 78a.

24. The District Court was presented with cases from the Eight Circuit Court of Appeals that caution against summary judgement in civil right pleadings and employment discrimination cases citing cases from this court such as *Adickes v. U. S. H. Kress Co.* 398 U. S. 144, 153-59, 90 U. S. Ct. 1598, 26 L. Ed. 2d 142 (1970) and *United States v. Diebold, Inc.*, 369 U. S. Ct. 993, 8 L. Ed 2d 176 (1962). See Appendix O at 76a through 78a. Inferences of administrative dereliction are drawn from the time line of events and correspondence between Mr. Bledsoe and the EEOC prior to him filing suit in the District Court. See Appendix O at 78a through 86a.

Fed. Rules Civ. Proc. Rule 56."

The Eighth Circuit cited Eighth Circuit cases *Hawkeye Nat'l Life Ins. Co. v. AVIS Indus. Corp.*, 122 F. 3d 490, 496 (8th Cir. 1997); *Donaho v. FMC Corp.*, 74 F. 3d 894, 897-98 (8th Cir. 1996); and *Gundacker v. Unisys Corp.*, 151 F. 3d 842, 846 (8th Cir. 1998) as it affirmed the district courts decision for summary judgement. However, the doctrine of *stare decisis* states that a Court of Appeals is bound by the decisions of the Supreme Court. It is to that end that evidence will demonstrate that the lower courts rulings of summary judgement for Nucor Yamato Steel Company cannot "lie" supporting the fact that this case should be summarily reversed for discovery and trial. It is to this Courts interpretation of the statutory scheme of the EEOC that we now turn.

II.

THE DECISIONS BELOW CONFLICT WITH THE CONGRESSIONAL INTENT AND THE STATUTORY SCHEME OF THE EEOC AS IT RELATES TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

It is well established within this Court that as a federal agency, the EEOC has been given wide latitude by Congress to enforce charges of discrimination as it relates to Title VII of the Civil Rights Act of 1964 and its 1972 amendments.[25]

The crux of this case lies with the October 27, 1998 letter[26] from Mr. Bledsoe to the EEOC which language clearly

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25. See Appendix O at 82a through 85a.

26. See Appendix H at 32a and Appendix O at 80a and 81a

states that he was requesting finality from the EEOC so that he could litigate his case and reconsideration of his case. It is undisputed by Nucor Yamato Steel Company that the letter was received on October 28, 1998 by the EEOC 60 days prior to the 180 day limitations period to file a charge of discrimination.

It also undisputed that the EEOC did not respond to Mr. Bledsoe's request until 30 days after the expiration period as Mr. Bledsoe was "lulled" into believing that the EEOC was considering the second element of his request which was reconsideration. These facts were presented to both courts below. In his request for rehearing en banc to the Eighth Circuit which was denied, Mr. Bledsoe stated that "During the course of this litigation Appellee-Nucor Yamato Steel Company nor the Courts have cited any cases or statutes that support or justify the administrative negligence of the EEOC as it relates to the above-entitled cause therefore the preliminary opinion must be reversed."[27]

While Nucor Yamato Steel Company has presented the argument of negligence on the part of Mr. Bledsoe, it has failed to adduce any relevant evidence in support of the 90 day period of inactivity by the EEOC.

To the contrary, Nucor Yamato Steel Company used as an affirmative defense to Mr. Bledsoe's first amended complaint the fact that the "EEOC failed to comply with its statutory duty to investigate and resolve the allegations." [28]

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27. See Appendix C at 17a.

28. See Appendix P. The fact that the EEOC did not conduct a proper investigation was addressed extensively by Mr. Bledsoe in his June 1, 1999 letter to the Little Rock EEOC prior to filing suit in Federal District Court. See Appendix J at 47a through 50a.

This gives even more weight to Mr. Bledsoe's claim of administrative dereliction by the EEOC.

Lull is defined as "1. a period of less noise or violence; brief calm. 2. *Figurative*. a period of reduced activity. To understand lull in this instant, the court should have looked to the evidence in the time line of events presented in Mr. Bledsoe's objection to motion for summary judgement.

The time line of events[29] clearly demonstrate that Mr. Bledsoe diligently pursued his claim until October 27, 1998 when he experienced that period of reduced activity as he waited for the EEOC to respond to his request. The court should have also looked to Mr. Bledsoe's diligence after January 29, 1999[30] when the EEOC responded to his second letter which referenced the October 27th letter.

The Eighth Circuit affirmed the district courts ruling regarding summary judgement but its ruling actually speaks to the fact that Mr. Bledsoe was lulled into inactivity when it stated that "it is unfortunate that he waited to hear from the EEOC before taking further action"[31] and the district court as it stated "it was his impression that the Little Rock office of the EEOC had reconsidered the information submitted by Plaintiff and was conducting an investigation."[32]It is clear that the district and the Eighth Circuit failed as the courts did not satisfy elements (1) and (2) of the threshold requirements of *Anderson v. Liberty Lobby, Inc.*, 477 U.S.242, 250 (1986).

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29. See Appendix O at 79a through 81a.

30. See Appendix I.

31. See Appendix B at 12a.

32. See Appendix A at 3a and 5a through 6a.

If the lower courts had applied Fed.Evid.R. 401 which relates to relevant evidence and the Reasonable Man Standard in determining its admissibility, this case would not be before this Court.

Needless to say, the Courts nor Nucor Yamato Steel Company adduced any statutes or case law that support the EEOC's negligence because there are none.[33] In this instant, it is clear that the EEOC violated the Congressional intent for it to enforce the discriminatory acts of Nucor Yamato Steel Company.

It is clear that Mr. Bledsoe was mislead by the EEOC and that the period for filing a charge against Nucor Yamato Steel Company should be equitably tolled and that the lower courts holding should not be allowed to stand. It is to this Courts interpretation of the 180 day limitations period that we now turn.

III.

THE EIGHTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURTS INTERPRETATION OF THE CONGRESSIONAL INTENT OF THE 180 DAY LIMITATIONS PERIOD FOR FILING CHARGE AS IT RELATES TO *ZIPPS v. TRANSWORLD AIRLINES, INC.*

The doctrine of equitable tolling is appropriate only

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33. Even though the June 11, 1999 letter from the Little Rock Area EEOC Area Director was misleading regarding the time to file suit in Federal District Court, it does imply that the EEOC could reconsider a determination as late as the 90 day deadline for filing suit. See Appendix K. The Little Rock EEOC Area Director was corrected regarding the 90 day deadline by Mr. Bledsoe in his June 14, 1999 letter to the EEOC. See Appendix L.

the circumstances that cause a Plaintiff to miss a filing deadline are out of his hand as it relates to *Zipps v. Transworld Airlines, Inc.*, 455 U.S. 385, 393, 102 S. Ct. 1127, 1132-33, 71 L. Ed. 2d 234 (8th Cir. 1982) and *Hill v. John Chezik Imports*, 829 2d. 112, 1124 (8th Cir. 1989). Equitable tolling arises upon some positive misconduct by the party against whom it is asserted, *De Brunner v. Midway Equipt. Co.*, 803, F. 2d 950, 952 (8th Cir. 1986). *Melendez v. Singer-Finden*, 529 F. 2d. 321, 323-24 (10th Cir. 1976), equitable tolling is warranted where matters, beyond plaintiff's control are at work such as administrative delay or dereliction.

Evidence has been presented which support the fact that the EEOC was derelict in this instant causing Mr. Bledsoe to miss the 180 day filing deadline.

The Eighth Circuit's decision regarding equitable tolling fundamentally misinterprets this Courts interpretation of the 180 day limitations period to file a charge as it relates to *Zipps*, 455 U.S. 385 (citation omitted), as this Court held that "the statutory time provision for filing with the EEOC Title VII claim against a private employer is not a jurisdictional prerequisite to suite in federal court, but instead subject to waiver, estoppel, and equitable tolling." To lend further support for its interpretation, this Court cited *Electrical Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 97 S. Ct. 441, 50 L. Ed 2d. 427 (1976), where this Court stated that "we also hold that the 180 day "limitations period" enacted by the 1972 Amendments, was not jurisdictional." In reaching this conclusion, this Court cited *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 316, 65 S. Ct. 1137, 1142-1143, 89 L. Ed. 1628 (1945), stating that " Certainly it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time per se an offense against the Fourteenth Amendment."

The Eighth Circuit cited 42 U.S.C. §2000e-5(1) which it believes that Title VII requires a claimant to file an administrative charge with the EEOC with 180 days of the alleged discriminatory conduct. However, this Court held in *Zipps*, 455 U.S. 385 (citation omitted) that,

> "the provision granting district courts jurisdiction under Title VII, 42 U.S.C. §2000e-5(e) and (f) does not limit jurisdiction to those cases in which there has been a timely filing with the EEOC. It contains no reference the timely filing requirement. The provision specifying the time for filing charges with the EEOC appears as an entirely separate provision, and it does not speak in jurisdictional terms or refer in any way to the jurisdiction of district courts. The legislative history of the filing provision is sparse, but Senator Humphrey did characterize the time period for filing a claim as a "period of limitations," 110 Cong. Rec. 12723 (1964), and Senator Case described its purpose as preventing the pressing of "stale" claims, id., at 7243, the end served by a statute of limitations."

In *Rivers v. Roadway Express* (1994, US) 128 L. Ed 2d 274, 114 S. Ct. 1510, 64 BNA FEP Cas 842, 64 CCH EPD ¶42948 this Court ruled that "It is the Supreme Court's responsibility to say what a federal statute means, and once the Supreme Court has spoken, it is the duty of the other courts to respect that understanding of the governing rule of law." For this cause alone, the Eighth Circuits ruling should not be given binding affect. However we now turn to the Eighth Circuits error of not following the above precedent as well as precedents of the Eighth Circuit which are relative to this instant.

IV.

THE EIGHTH CIRCUITS DECISION ON THE 180 DAY LIMITATIONS CONFLICTS WITH THIS COURT AND RELEVANT DECISIONS OF THE EIGHTH CIRCUIT AS IT RELATES TO THE DOCTRINE OF *STARE DECISIS.*

It is clear that the EEOC was administratively derelict in lulling Mr. Bledsoe into believing that the EEOC was addressing his request(s) and it is also clear that Eighth Circuits holding on the 180 day filing period is in direct conflict with this Courts interpretation of the filing period.

It is even more apparent that the case law used by the Eighth Circuit to render its opinion were not relevant to this instant regarding the doctrine of equitable tolling. Mr. Bledsoe addressed this issue at length in his reply brief as well as his request for rehearing in banc to the Eighth Circuit.

As an appellate court, the Eighth Circuit must determine the rights of the parties before it in accordance with principle established by law, *United States v. Union P. R. Co.* 98 U.S. 569, 25 L. d 143. In the area of case law, the courts follow the rule of stare decisis, which provides that a determination of a point of law by a court will generally be followed by a court of the same or lower rank if a subsequent case presents the same legal problem, 20 *Am. Jur.* 2d, *Courts* §183.

Stare decisis promotes the evenhanded, predictable, and consistent development of legal principles; fosters reliance on judicial decision; and contributes to the actual and perceived integrity of the judicial process, *Payne v. Tennessee* 115 L. Ed. 2d. 720, 111 S. Ct. 2597, reh den (U.S.) 115 L. Ed. 2d. 1110, 112 S. Ct. 28 (1991, U.S.). Accordingly, in deciding

a case, the Supreme Court is bound to examine its precedents, *De Bearn v. Safe Deposit & Trust Co.* 233 U.S. 24, 58 L. Ed. 883, 34 S. Ct. 584 (1914). The Court of Appeals is bound by the decisions of the Supreme Court until such time as the Supreme Court informs it that the rule of decision has changed, *Pope v. United States*, 298 F2d 507; *United States ex rel. Fein v. Deegan*, 410 F2d 13, cert. den. 395 U.S. 935, 23 L. Ed. 2d. 450, 89 S. Ct. 1997 (1969, C.A. 2 NY).

The Eighth Circuit is therefor bound in this instant by *Zipps v. Transworld Airlines, Inc.*, 455 U.S. 385(citation omitted).

The appellate court is also bound by prior decisions of its own circuit, *United States v. Cooper*, 462 F2d. 1343, cert. den. 409 U.S. 1009, 34 L. Ed. 2d. 303, 93 S. Ct. 452 (1972, C.A. 5 Fla.). The Eighth Circuit affirmed the district courts ruling for summary judgement citing *Shempert v. Harwick*, 151 F. 3d 793, 797 (8th Cir. 1998), cert. denied, 525 U.S. 1139 (1999) and *De Brunner v. Midway Equip. Co.*, 803 F. 2d 950, 952 (8th Cir. 1986) as cases in support of its affirmation which did not present the same legal problem as Mr. Bledsoe's case which was referenced in Mr. Bledsoe's petition for rehearing en banc.[34] *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir. 1995) which was cited by *Shempert*, 151 F. 3d 793 (citation omitted) was cited by Mr. Bledsoe in his petition for rehearing en banc as case law which presented the same legal problem. However, the petition for rehearing en banc was denied without comments.

Anderson, 47 f. 3d 302 (citation omitted) states "Other

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34. See Appendix C at 15a through 16a. Concerns regarding the misapplication of case law were also expressed by Mr. Bledsoe to the Eighth Circuit Court of Appeals in his Appellants Reply Brief.

circuits, as well as our own, have held that when an administrative agency misleads a complainant, particularly one who is without the benefit of counsel, equitable tolling may be justified., *citing Warren v. Department of Army*, 867 F. 2d. 1156-61 (8th Cir. 1989); *Early v. Banks Life and Casualty Co.*, 959 F. 2d. 75, 81 (7th Cir. 1992); *Bloomberg v. HCA Management Co.*, 858 F. 2d 642, 644 (5th Cir. 1988); and *Martinez v. Orr*, 738 F. 2d 1107, 1111-12 (10th Cir. 1984), where equitable tolling was granted in each case due to misleading conduct of the EEOC. *Martinez* like Mr. Bledsoe was lulled into believing that the EEOC was reconsidering its decision.

Warren v. Department of Army, 867 F. 2d 1156 (citation omitted) is another Eighth Circuit precedent which present the same legal problem as this instant. Like Mr. Bledsoe's case, it speaks to the diligence of the plaintiff. The court stated "Importantly, this is not a case where plaintiff needlessly delayed instituting an action. Instead, the record reveals that Warren acted with "utmost diligence," only to find himself caught up in an arcane procedural snare."[35]

In applying the doctrine of *stare decisis*, it is apparent that the Eighth Circuit was in error in affirming the decision of the district court of summary judgement for Nucor Yamato

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35. See *Warren v. Department of Army*, 867 F. 2d. 1156, 1160-61(8th Cir. 1989) *citing Thomas v. KATV Channel 7*, 692 F. 2d 548, 549-50 (8th Cir. 1982) (per curiam) cert. denied 460 U. S. 1039, 103 S. Ct. 1431, 75 L. Ed. 2d 790 (1983), We have previously indicated that because the remedial character of Title VII, the filing period 42 U.S.C. § 2000e-5(f)(1) is more akin to a statute of limitations than a jurisdictional prerequisite. *Martinez v. Orr*, 738 F. 2d 1107, 1111-12 (10th Cir. 1984), tolling limitation period where plaintiff was lulled into inaction by EEOC. *Bobby v. Dean*, 821 F. 2d 346, 349-50 (6th Cir. 1987); *Hornsby v. United States Postal Service*, 787 F. 2d 860, 862 (11th Cir. 1982); *Paulk V. Department of the Air Force, Chanute Air Force Base*, 830 F. 2d 79, 81, 83 (7th Cir. 1987).

Steel Company. For summary judgement is proper only where there is no genuine issue of material fact, so that the dispute may be decided solely on legal grounds as it relates to *Holloway v. Lockhart*, 813 F. 2d 874 (8th Cir. 1987).

V.

THE EIGHTH CIRCUITS DECISION ON EQUITABLE TOLLING IN THIS INSTANT WOULD CREATE A FOURTEENTH AMENDMENT QUESTION

If the Eighth Circuits decision on equitable tolling in this instant is allowed to stand it would create a major Constitutional issue related to the Fourteenth Amendment and equal access to the courts.

If this issue is allowed to stand, it would allow the Eighth Circuit to engraft its own notion of proper procedure upon an agency (EEOC) entrusted with the substantive functions by Congress. This Court has cautioned reviewing courts against such notions. *Vermont Yankee Nuclear Corp., v. National Resources Defense Council Inc.*, 435 U.S. 519, 556, 98 S. Ct. 1197, 55 L. Ed. 2d 460 (1978) ("Court of Appeals has unjustifiably intruded into the administrative process")

It would say to the EEOC that it is not accountable as an administrative agency for its actions in responding to charges of discrimination if and when it decides to respond to those charges.

Allowing this decision to stand would allow the Civil Rights of citizens to be taken away by their employer and a second time by the administrative agency whose task has been assigned by Congress to enforce such violations, denying citizens their right to the "due process" of the law.

The sanctioning of such holding would have a devastating affect in states such as Arkansas where Mr. Bledsoe resides since the EEOC is the only avenue to administer the federal issue of discrimination.[36]

Summarily reversing the judgement of the Eighth Circuit would be appropriate in this instance as it relates to *E. g., Helvering v. Wiese*, 292 U.S. 614, 615, 54 S. Ct. 862, 78 L. Ed. 1473 (1934) (Judgement summarily reversed).

It would also lift the bar of the statute of limitation so as to restore a remedy lost through the mere lapse of time that this Court speaks to in *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 316, 65 S. Ct. 1137, 1142-43 89 L. ed. 1628 (1945).

Mr. Bledsoe's claims of racial discrimination, harassment and retaliation under 42 U.S.C. § 2000e must therefore be maintained as violations of Title VII of the Civil Rights Act of 1964.

VI.

THE EIGHTH CIRCUIT DECISIONS ON STATE LAW CLAIMS CONFLICT WITH DECISIONS OF THIS COURT, THE ARKANSAS SUPREME COURT AND ARKANSAS LAW.

1. *The Lower Courts Decisions on Tort of Outrage Claims Conflict with Decisions of this Court and Arkansas Law.*

The theory of respondeat superior became a tort claim in Mr. Bledsoe's motion to file first amended complaint. The motion was granted by the district court without objection

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36. See Appendix C at 18a.

from Nucor Yamato Steel Company.

The 4(four) certified letters mailed by Mr. Bledsoe and received by Nucor Yamato Steel Company prior to termination and the psychological evaluations conducted by Nucor Yamato Steel Company psychologist speak to Mr. Bledsoe's claim of emotional distress.[37]

Evidence supports the fact that an hostile environment was also created by supervisors of Nucor Yamato Steel Company which led to the severe shoulder injury to Mr. Bledsoe.[38]

The claims for tort of outrage exceed the criteria set forth in *Hollomon v. Keadle*, 931 S.W. 2d 413, 415 (Ark. 1996) and *M.B.M. Co. v. Counce*, 596 S.W. 2d 681, 687 (Ark. 1980).

It is clear that the hostile environment was fostered by Nucor Yamato Steel Company in that no corrective action was taken as Nucor Yamato Steel Company violated its company complain procedure by not taking prompt action.[39] The Eighth Circuit states that "employer is under duty to take corrective action when complaints to a supervisor of harassment of coworker are made" in *Bailey v. Runyon*, 167 F. 3d 466, 79 BNA FEP Cas. 225 (8th Cir. 1999).

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37. See Appendix G at 29a, Appendix J at 41a and Appendix O at 92a through 94a. Certified letters and psychological evaluations were referenced in Mr. Bledsoe's Appellant Brief to the Eighth Circuit Courts of Appeals and entered as part of the records to Federal District Court as exhibits to Mr. Bledsoe's Opposition to Summary Judgement - Appendix O.

38. See Appendix J at 39a through 41a.

39. See Appendix J at 42a through 46a and Appendix O at 92a through 93a.

This Court in *Feragher v. City of Boca Raton*, 118 S. Ct. 2275 (11th Cir. 1998), Granting certiorari, held that;

> "Employer is subject to vicarious liability under Title VII to a victimized employee for actionable discrimination caused by a supervisor, but employer may raise an affirmative defense that looks to the reasonableness of employers conduct in seeking to prevent and correct harassing conduct and to the reasonableness of employees conduct in seeking to avoid harm."

More humiliation and distress was brought upon Mr. Bledsoe when he requested help to cope with the stress caused by the harassment but was not afforded it.[40]

Since Nucor Yamato Steel Company has not presented to the courts evidence that looks to the prevention or correction of harassment, this Court must summarily reverse the lower courts holding regarding Mr. Bledsoe's claim for tort of outrage in this instant.

2. *The Lower Courts Holding on Defamation and Qualified Privilege Conflict with Decisions of the Arkansas Supreme Court and Arkansas Law.*

Remarks made by supervisors of Nucor Yamato Steel Company exceed qualified privileged for business related communications. Remarks made by supervisor in the presence of Mr. Bledsoe's wife and children that one of Mr. Bledsoe's children did not look like him was not qualified

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40. See Appendix J at 41a.

business related communication.[41]

Remark made by department manager to Mr. Bledsoe's coworker that "I don't care if Raymon is fucking your wife, your are going to get along" if considered business communications was exceeded qualified privilege in that it was an intentional false communication which was publicly spoken that injured not only Mr. Bledsoe's good name but also the good names of coworker and his wife.

Accusation by lawyers during deposition of drug use by Mr. Bledsoe and his children which was supported only by an internet inquiry and no adduced evidence from the 6(six) years of employment and numerous at random drug tests by Nucor Yamato Steel Company nor a police report also exceed qualified privilege business related communications.

Arkansas Supreme Court Justice, Judge J. Hays ruled in *Dillard Department Stores v. Felton*, 634 S. W. 2d 135 (Ark. 1982) and citing *Arkansas Associated Telephone Company v. Blankenship*, 211 Ark. 645, 201 S. W. 2d 1019 (1947) that;

> "we, approved the following language: The protection of the privilege may be lost by manner of its exercise, although the belief in the truth of the charge exists. The privilege does not protect any unnecessary defamation. In order for a communication to be privileged, the party making it must be sure to go no farther than his interest or his duties require. Where the party exceeds his privilege and the communication complained of goes beyond what the occasion demands that it should publish, and is unnecessarily defamatory to plaintiff, he will not be protected, and

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41. See Appendix O at 105a through 107a.

> the fact that a duty, a common interest, or a confidential relation existed to limited degree is not a defense, even though he acted in good "faith" (At p. 651, 201 S. W. 2d 1019).

It is clear that qualified privilege for business related communications was lost in all of the above instants. The doctrine of *stare decisis* requires that in determining a matter of state law, federal courts are bound to follow the decisions of the highest court of the state as it relates to *Huddleston v. Dwyer*, 322 U.S. 232, 88 L. Ed 1246, 64 S. Ct. 1015 (1944). Accordingly, the Eighth Circuits holding regarding Mr. Bledsoe's claim should be summarily reversed.

3. *The State Law Claims not Addressed by the Eighth Circuit Should Stand be Summarily Reversed for Trial.*

1. *The Hate Offense Claim.* The statement "When I come after you, you will know it" qualifies under Arkansas Law rises to the level of a civil rights offense as it relates to 16-123-105 of the Arkansas Code.

2. *Spoilation of Evidence/Willful Destruction.* Claim based upon the destruction of Mr. Bledsoe's resume by Nucor Yamato Steel Company. *Middleton v. Middleton*, 68 S.W. 2d. 1003, 188 Ark. 1022; Fed. Rules Evid. R. 1004(e) U.S.C.A.

Conclusion

The decisions of the court below collide with this Court's interpretation, State Law and the Arkansas Supreme Court. The error is so obvious and I suggest this is one of those exceptional cases in which summary reversal for discovery and trial are in order. If on the other hand, there might be basis for oral arguments, certiorari should be granted for plenary review of these questions, which are very

important especially equitable tolling.

Respectfully submitted,

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, Arkansas 72301
(870)732-0269
Pro Se

January 28, 2002

APPENDIX

APPENDIX A – ORDER GRANTING SUMMARY JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS WESTERN DIVISION DATED OCTOBER 19, 2000 AND ENTERED OCTOBER 23, 2000.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

RAYMON BLEDSOE SR. Plaintiff

v. J-C-99-220

NUCOR YAMATO STEEL CO. Defendant

ORDER

Pending are Defendant's Motion for Summary Judgement (Docket #33) and Plaintiff's Motion to Compel (Docket #32). The parties have responded to the respective motions. For the reasons set forth herein, the Court finds that Defendant's Motion for Summary Judgement should be and hereby is granted. Plaintiff's Motion to Compel is denied as moot.

Facts

Plaintiff filed this suit based upon Title VII of the Civil Rights Act of 1964 for alleged racial discrimination, harassment and retaliation. Plaintiff also presents a claim for the tort of outrage and defamation under Arkansas Law.

Plaintiff was employed by Defendant from June 1992 through July 1998. During his employment Plaintiff was

promoted twice. However, Plaintiff had a history of performance problems including insubordination, sleeping on the job and fighting with co-workers. Specifically, the following performance incidents occurred:

- In August 1994, Plaintiff received a verbal warning for an incident in which Plaintiff cured at a co-worker and threw sand over the co-worker's head.
- Plaintiff was suspended for one day in July 1996 for arguing with and pushing another employee.
- Plaintiff received a verbal warning for sleeping on the job in April 1998.
- Plaintiff received a written warning on May 12, 1998 for insubordination.
- On May 13, 1998 Plaintiff received a written warning for poor work performance.
- During a meeting on May 28, 1998, Plaintiff was warned about numerous work rule violations.
- On June 22, 1998 after a co-employee complained about Plaintiff, Plaintiff was placed on suspension for three days.
- On July 2, 1998 Plaintiff was terminated.

Plaintiff claims that each of these disciplinary actions and his termination represented adverse employment actions.

Following his termination, on August 6, 1998 Plaintiff contacted the EEOC by telephone. The Little Rock EEOC office provided Plaintiff with a charge information form along with a notice entitled "You May File a Charge". On August 24, 1998 Plaintiff Completed the Charge Information Form and returned it to the Little Rock . Plaintiff also signed and returned the "You May File a Charge" form acknowledging

that he had read it. On September 8, 1998 the Memphis EEOC office sent Plaintiff a letter stating that it had received his information and needed to discuss the matter in more detail. On September 15, 1998 Plaintiff spoke with Christine Wilson at the Memphis EEOC office. In this conversation, Wilson discussed Plaintiff's claims and advised him of the 180 day statute of limitation in which to file his charge. On October 27, 1998 Plaintiff sent a letter to the Little Rock EEOC office expressing his dissatisfaction with the interview process with the interview with Ms. Wilson. Plaintiff contends that following this letter he was under the impression that the Little Rock office had reconsidered the information provided on his claim and conducting an investigation. Plaintiff did not take any further action until January 29, 1999, one month following the expiration of the 180 day statute of limitation, when Plaintiff sent another letter to the Little Rock EEOC office requesting information on his claim. On March 8, 1999 Plaintiff filed his Charge of Discrimination with the EEOC.

Standard for Summary Judgement

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided sole on legal grounds. *Holloway v. Lockhart,* 813 F. 2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56. The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

> The inquiry is the threshold inquiry of determining whether there is a need for trial - whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.

Appendix A

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986) The Eighth Circuit Court of Appeals has cautioned that summary judgement should be invoked carefully so that no person will be improperly deprived of a trial of disputed factual issues. *Inland Oil & Transport Co. v. United States*, 600 F. 2d 725 (8th Cir. 1979), *cert. denied*, 444 U.S. (1979). The Eighth Circuit set out the burden of the parties in connection with a summary judgement motion in *Counts v. Ferguson Co.*, 862 F. 2d 1338 (8th Cir. 1998):

> [T]he burden on the moving party for summary judgement is only to demonstrate, *i.e.*, '[to] point out to the District Court,' that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, the burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.

Id. at 1339. (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F. 2d 268, 273-274 ()8th Cir. 1988) (citations omitted)(brackets original)). Only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at 248.

Title VII Claims

Under Title VII, an administrative charge must be filed

within 180 days of the alleged discriminatory incident. In order to valid, Title VII requires that "charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the [EEOC] requires. 42 U.S.C.§2000e-5(e)(1). There is no dispute that the last alleged discriminatory act occurred on July 2, 1998. Thus, Plaintiff's Charge of Discrimination was required on of before December 28, 1999. It is also undisputed that Plaintiff did not file his Charge until March 8, 1999.

Plaintiff contends that the doctrine of equitable tolling should apply as the delay in filing his charge was due to the administrative delay of the EEOC and was beyond his control. It is well settled that equitable tolling is premised on the "excusable neglect" of the filing party. *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir.), *cert. denied,* 516 U.S. 913 (1995). As a general rule, equitable tolling is a remedy reserved for circumstances that a "truly beyond the control of the plaintiff". *Hill v. John Chezik Imports,* 869 F. 2d 1122, 1124 (8th Cir. 1989). Instances in which equitable tolling would be appropriate include: (1) a claimant has received inadequate notice; (2) a motion for appointment of counsel is pending; (3) the court has led the plaintiff to believe that he or she has done everything required of him or her; or (4) affirmative misconduct on the part of a defendant lulled the plaintiff into inaction. *Baldwin County Welcome Ctr. v. Brown,* 466 U.S. 147,151 (1984).

Plaintiff does not contend that he was unaware of his rights. In fact, Plaintiff admits that he was advised of the 180 day statute of limitations deadline. Plaintiff claims that following his October 27, 1998 correspondence, it was his impression that the Little Rock office of the EEOC had

reconsidered the information submitted by Plaintiff and was conducting an investigation. However, the EEOC did not mislead the Plaintiff of give him false information regarding the filing of his Charge of Discrimination. The delay in filing was not due to circumstances beyond Plaintiff's control. Plaintiff was aware of the statutory deadline and failed to file his charge within that time period. Plaintiff cannot now invoke the principle of equity to excuse his lack to diligence. *Id.* For these reasons, the court finds that Plaintiff's claims of racial discrimination, harassment and retaliation under 42 U.S.C. §2000e should be and hereby are dismissed based upon Plaintiff's failure to file an administrative charge as required by 42 U.S.C. §2000e-5(e)(1).

State Law Claims

Plaintiff also seeks relief based upon the state law claim of outrage. In order to succeed on a tort of outrage claim under Arkansas law, a plaintiff must prove that: "1) the defendant intended to inflict emotional distress or knew of should have known that emotional distress was the likely result of his conduct; 2) the conduct was extreme and outrageous, and was utterly intolerable in a civilized community; 3) the defendant's conduct was the cause of the plaintiff's distress; and 4) the plaintiff's emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it." *Hollomon v. Keadle,* 931 S.W. 2d 413, 415 (Ark. 1996). "By extreme and outrageous conduct, we mean conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society." *M.B.M. Co. v.Counce,* 596 S.W. 2d 681, 687 (Ark. 1980). The Arkansas Supreme Court has

noted in a multitude of cases that the tort of outrage is viewed very narrowly in an employment setting. The Court finds that Plaintiff's allegations do not rise to the level of the tort of outrage under Arkansas Law.

Plaintiff's claims of defamation stem from employee write-ups and supervisor comments in the employment setting. The Court finds that the Defendant is entitled to a qualified privilege for business related communications and Plaintiff has not met his burden to prove that this privilege that this privilege has been abused. *Ikani v. Bennett*, 284 Ark. 409, 682 S.W. 2d 747 (1985). In addition, the one year statute of limitations bars Plaintiff's claims relating to verbal statements made in the workplace prior to June 3, 1998. Finally, the words about which Plaintiff complains are not actionable and do not meet the threshold requirement for a defamation action. Thus, summary judgment is proper.

Conclusion

For reasons set forth herein, the Court finds that the Defendant's Motion for Summary Judgement (Docket #33) should be and hereby is granted. Plaintiff's Motion to Compel (Docket #32) is denied as moot.

IT IS SO ORDERED this 19 day of October, 2000.

s/ James Moody
JAMES M. MOODY
UNITED STATES DISTRICT JUDGE

Appendix A

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79 (a) FRCP
ON 10-23-00 BY s/ TM

APPENDIX B – ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DATED AND ENTERED AUGUST 30, 2001 AFFIRMING THE DISTRICT COURTS ORDER FOR SUMMARY JUDGEMENT

United States Court of Appeals
For the Eighth Circuit

No. 00-3895EA

Raymon Bledsoe, Sr.,	*	
Appellant,	*	On Appeal from the
	*	United States District
v.	*	Court for the Eastern
	*	District of Arkansas.
Nucor-Yamato Steel Co.	*	
Appellee.	*	[Not To Be Published]

Submitted: July 20, 2001
Filed: August 30, 2001

Before MORRIS SHEPPARD ARNOLD, RICHARD S. ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Raymon Bledsoe, Sr. filed suit against Nucor-Yamato Steel Company ("Nucor") claiming race discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e through 2000e-1, and defamation and outrage under Arkansas law. The District Court granted summary judgement on all of Mr. Bledsoe's claims. He appeals and we affirm.

Appendix B

On July 2, 1999, Mr. Bledsoe's employment with Nucor was terminated. He contacted the Equal Employment Opportunity Commission office in Little Rock, Arkansas. The EEOC sent him a charge information form entitled "You may file a charge." Mr. Bledsoe completed the charge information form and returned it to the Little Rock office. In September, he was contacted by the EEOC office in West Memphis, Arkansas. An EEOC agent informed Mr. Bledsoe that the EEOC would not represent him in his claim, and that he had 180 days from the date of his termination to file and administrative charge. During the following months, Mr. Bledsoe sent two letters to the Little Rock office complaining that his telephone interview with the West Memphis office was inadequate and requesting that the Little Rock office review his claim and render a decision. He did not file a charge before December 29, 1998, the day on which the 180-day time period elapsed. After receiving a right-to-sue letter, Mr. Bledsoe filed this suit against Nucor.

Mr. Bledsoe filed suit, *pro se*, in the District Court alleging race discrimination and retaliation in violation of Title VII. The Court permitted him to file an amended complaint to include state law claims of defamation and outrage. During discovery, he filed four motions for leave to file second a amended complaint, which were all denied by the Court on the basis of either undue prejudice, undue delay, lack of diligence, or futility. Near the close of discovery, he filed a motion to compel, requesting documents from Nucor pertaining to his Title VII claims. Nucor filed a motion for summary judgment. After a full hearing, the Court determined that Mr. Bledsoe's Title VII claims were barred by the 180-day statute of limitations. The Court declined to apply the doctrine of equitable tolling, holding that the delay was

not due to circumstances beyond Mr. Bledsoe's control. Likewise, the Court entered summary judgment on the state law claims, holding that the complained -of behavior did not rise to the level of outrageous conduct required under Arkansas law. Similarly, the Court held that the alleged defamatory statements were either time-barred, privileged, or not actionable. Consequently, the Court held that the motion to compel was moot. This appeal followed.

II.

We review a district court's grant of summary judgment de novo. Hawkeye Nat'l Life Ins. Co. v. AVIS Indus. Corp., 122 F. 3d 490, 496 (8th Cir. 1997). We consider "all facts in light most favorable to the non-moving party and give to the non-moving party the benefit of all reasonable inferences that can be drawn from the facts." Donaho v. FMC Corp., 74 F. 3d 894, 897-98 (8th Cir. 1996) (citation omitted). Summary judgment is proper "where there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Gundacker v. Unisys Corp., 151 F. 3d 842, 846 (8th Cir. 1998).

Mr. Bledsoe argues that the Court erred in failing to apply the doctrine of equitable tolling because the EEOC engaged in "positive misconduct" by improperly transferring his claim to the West Memphis office, conducting only a ten-minute telephone interview, not promptly responding to his letters, and initially mailing the right-to-sue letter to an incorrect address. See Debrunner v. Midway Equip. Co., 803 F. 2d 950, 952 (8th Cir. 1986) (holding "[e]quitable tolling arises upon some positive misconduct by the party against whom it asserted"). Thus he argues, the ability to file a timely charge

was out of his hands. We disagree.

Title VII requires a claimant to file an administrative charge with the EEOC within 180 days of the alleged discriminatory conduct. 42 U.S.C. § 2000e-5(1). It is undisputed that Mr. Bledsoe did not file a timely claim. "The filing of a timely charge with the EEOC is a "requirement that, like a statute of limitations, is subject to . . . equitable tolling.' " Shempert v. Harwick, 151 F. 3d 793, 797 (8th Cir. 1998), cert. denied, 525 U.S. 1139 (1999) (citation omitted). However, the doctrine of equitable tolling is a limited one "reserved for circumstances that are truly beyond the control of the plaintiff." Shempert, 151 F. 3d at 798 (internal quotations and citation omitted). The application of the doctrine is appropriate where: "(1) a claimant has received inadequate notice; (2) a motion for appointment of counsel is pending; (3) the court has led the plaintiff to believe that he or she has done everything required of him or her; or (4) affirmative misconduct on the part of a defendant lulled the plaintiff into inaction." Id. (citation omitted).

None of the above circumstances is present in this case. It is undisputed that Mr. Bledsoe understood that he had 180 days to file an administrative charge. See DeBrunner, 803 F. 2d at 952 (holding when "an employee is generally aware of his rights, ignorance of specific legal rights or failure to seek legal advice should not toll the 180-day notification period"). Although it unfortunate that he waited to hear from the EEOC before taking further action, " '[p]rocedural requirements established Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.'" Shempert, 151 F. 3d at 797 (citation omitted). Further, nothing approaching

affirmative misconduct occurred on the part of the EEOC. Thus, we hold the Court did not err in granting summary judgment on Mr. Bledsoe's Title VII claims.

Moreover, after carefully reviewing the record we also disagree with Mr. Bledsoe's position that the Court erred in granting summary judgment on his state law claims of defamation and outrage. The alleged defamatory statements (unjustified employee write-ups, a supervisor's comment in 1996 to Mr. Bledsoe's wife and family that one of his children did not favor him; a supervisor's statement to a fellow employee that he did not care if Mr. Bledsoe was having sex with the employee's wife, Mr. Bledsoe and the employee were going to get along; inquiries of Mr. Bledsoe during a deposition as to possible past drug use and possession) were either privileged, see Dillard Stores, Inc. v. Felton, 276 Ark. 304, 308, 634 S.W. 2d 135, 137 (1982), beyond the statute of limitations, see Ark. Code Ann. 16-56-104 (Michie 1987) (applying one year statute of limitations to defamation suits), or not actionable.

Likewise, the conduct underlying Mr. Bledsoe's claim of outrage ((1) the supervisor's statement, "when I come after you, you will know it," (2) being forced to work on material hotter than 1200 degrees, (3) a supervisor's statement to a fellow employee that he did not care if Mr. Bledsoe was having sex with the employee's wife, Mr. Bledsoe and the employee were going to get along, and (4) subjection to a psychological interview during the promotional process) was not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." M.B.M. Co. v. Counce, 268 Ark. 269, 280, 596 S.W. 2d

681, 687 (1980).

As to Mr. Bledsoe's remaining assignments of error, we hold that it proper to rule the motion to compel moot once the Court had correctly disposed of all to Mr. Bledsoe's claims. Likewise, the Court did not abuse its discretion in denying Mr. Bledsoe's motions for leave to file a second amended complaint.
Accordingly, the judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX C — PETITION FOR REHEARING EN BANC AND PETITION FOR REHEARING BY THE PANEL DATED SEPTEMBER 10, 2001 AND ENTERED SEPTEMBER 11, 2001

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Raymon Bledsoe, Sr. - Appellant

v 00-3895EA

Nucor-Yamato Steel Company - Appellee

Petition - For Rehearing In Banc

To the Honorable Judges of the United States Court of Appeals for the Eighth Circuit.

Introduction Statement

The argument and matter contained herein were not presented in the previous hearing to the above-entitled Court due to the Courts ruling.

Petition For Rehearing

Pursuant to the provisions of Rule 40 of the Federal Rules of Appellate Procedure, petitioner, Raymon Bledsoe, Sr. - Appellant herein, respectfully petitions the judges of this honorable Court for rehearing of the appeal in the above-entitled cause. In support of this petition, petitioner shows the Court as follows;

1. The cases relied upon in the Courts opinion regarding the matter of equitable tolling in the above-entitled cause do not

speak to the issue of the administrative responsibility of the EEOC.

In Shempert v. Harwick Chemical Corp. 151 F. 3d at 793 (8th Cir. 1998), Shempert had 180 days to file a charge of harassment. She waited until almost 2 weeks before the filing period expired to complete and mail Intake Questionnaire to the EEOC. In addition Shempert had the benefit of counsel for one full month before the filing period expired.

In DeBrunner v. Midway Equipment Co. 803 F. 2d 950 (8th Cir. 1986), DeBrunner had the benefit of EEOC counsel initially but waited 246 days after her termination to file a formal charge. And in each these cases the EEOC responded in a timely manner.

However, Mr. Bledsoe without the benefit of counsel, filed intake questionnaire, talked to EEOC representative at the Memphis, TN. office and mailed certified letter which has not been disputed by appellee-Nucor Yamato Steel nor the Courts, to the Little Rock EEOC office 60 days prior to end to of filing period. The EEOC had the administrative duty to respond to Mr. Bledsoe but did not prior to the deadline. The EEOC's actions were misleading to Mr. Bledsoe causing him to feel that the EEOC office was actually addressing the requests of his letter.

Within the framework of the request, Mr. Bledsoe expressed a desire to seek relief with an attorney of his hiring. An action by which the EEOC as well as this Court knows could have only been accomplished with a Charge of Discrimination issued by the Little Rock or Memphis Offices of the EEOC.

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The other primary issue expressed by Mr. Bledsoe was the time frame in which he had to litigate his case. The EEOC was aware of Mr. Bledsoe's desire to litigate this case 60 days prior to the end of the filing period but refused to respond.

Anderson v. Unisys Corp. 47 F. 3d 302, 306 (8th Cir. 1995) which is cited by the Court in Shempert 151 F. 3d at 793 is more akin to Mr. Bledsoe's case where this Court stated that "Other circuits, as well as our own, have held that when an administrative agency misleads a complainant, particularly one who is without the benefit of counsel, equitable tolling may be justified. Citing Warren v. Department of Army, 867 F. 2d. 1156, 1160-61 (8th Cir. 1989)(permitting equitable tolling of the statute of limitations in Title VII action in part because of misleading right to sue letter issued by EEOC); Early v. Banks Life and Casualty Co., 959 F. 2d. 75, 81 (7th Cir. 1992)(citing misleading conduct by the EEOC as a basis for equitable tolling); Bloomberg v. HCA Management Co., 858 F. 2d 642, 644 (5th Cir. 1988)(finding that misleading information from the EEOC may justify equitable tolling) cert. denied, 488 U. S. 1007, 109 S. Ct. 789, 102 L. Ed. 2d 781 (1989) Martinez v. Orr, 738 F. 2d 1107, 1111-12 (10th Cir. 1984) finding equitable tolling appropriate where notice from EEOC mislead pro se claimant regarding the finality of EEOC action).

During the course of this litigation Appellee-Nucor Yamato Steel Company nor the Courts have cited any cases or statutes that support or justify the administrative negligence of the EEOC as it relates to the above-entitled cause therefore the preliminary opinion must be reversed.

2. Mr. Bledsoe feels that the Courts opinion on the remaining

claims in the above-entitled cause were tainted by equitable tolling ruling to the extent that the Court overlooked the fact that Mr. Bledsoe was engaged in protected activity prior to termination by Nucor Yamato Steel Company which is supported by Reginelli v. Martin Industries, Inc., 987 F. Supp. 1137 (8th Cir. 1997), Hagens v. United States Department of Agriculture, 865 F. Supp. 1314 (8th Cir. 1994) as well as cases from other circuits. Mr. Bledsoe has also presented adequate cases and statutes that fully support the remaining claims in this cause, claims which surround the protected activity that Mr. Bledsoe was engaged in prior to termination. Supporting the fact that the summary judgement ruling was also improper.

Suggestion That Case Be Reheard In Banc

Pursuant to the provisions of Rule 35 of the Federal Rules of Appellate Procedure, petitioner respectfully suggests to the judges of this honorable Court that the above-entitled cause is appropriate for consideration on rehearing by all the judges of this Court convened in banc, and in support of this suggestion petitioner shows:

1. The proceeding involves a question of exceptional importance in that the Courts opinion regarding equitable tolling in the above-entitled cause would have a negative impact on similar litigation allowing the EEOC to circumvent the administrative responsibilities delegated to it by Congress.

2. Arkansas like many other states are without the benefit of state or local fair employment agencies and the EEOC serves as the only recourse for actions of discrimination as it relates to Title VII of the Civil Rights Act. The Courts opinion

regarding equitable tolling would relieve the EEOC of its administrative responsibilities opening to the door to other possible abuses. Such abuses speak to the Public Interest and must therefore be reversed.

3. The summary judgement ruling is a question of exceptional importance since the Eighth Circuit citing Windsor v. Bethesda General Hospital, 523 F. 2d 891 stating "in civil rights actions, pleadings are to be liberally construed" which is consistent with other circuits which have dismissed and vacated employers motion to dismiss. The Eighth Circuit has noted that summary judgement is a extreme remedy citing Robert Johnson Grain Co. v. Chemical Interchange Company, 541 F. 2d 207. The question to this Court is whether summary judgement is proper in light of documentation by Mr. Bledsoe, containing personal work related diary notes and certified letters to Appellee-Nucor Yamato Steel Company prior to Mr. Bledsoe's termination that speak to as well inference racial discrimination by Appellee-Nucor Yamato Steel Company.

4. The remaining claims of above-entitled cause have merit. Each claim should be addressed on an individual basis by this Court therefore the preliminary opinion must be reversed.

Wherefore, petitioner respectfully requests:

1. That a rehearing of the appeal in above-entitled cause be granted; and

2. That the honorable judges of this Court order that the above-entitled cause be heard by the court in banc allowing oral arguments.

Appendix C

September 10, 2001

s/ Raymon Bledsoe
710 Johnson Drive
West Memphis, AR. 72301
(870)732-0269

Certificate

I hereby certify that the fore going petition for rehearing is presented in good faith and not for delay.

s/ Raymon Bledsoe
710 Johnson Drive
West Memphis, AR. 72301
Pro Se

APPENDIX D– ORDER DENYING PETITION FOR REHEARING EN BANC DATED AND ENTERED OCTOBER 30, 2001.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 00-3895

Raymon Bledsoe, Sr.	.	
Appellant,	.	
	.	Order Denying Petition
	.	for Rehearing and for
vs.	.	Rehearing En Banc
	.	
Nucor-Yamato Steel Co.,	.	
Appellee	.	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.
(5128-010199)

October 30, 2001

Order Entered at the Direction of the Court:
s/ MICHAEL E. GANS
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX E – STATEMENT OF THE BASIS OF JURISDICTION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS – JONESBORO, ARKANSAS

Cause - 42:2000e Job Discrimination (Employment) - Federal Question

Relevant Facts - The Plaintiff, Raymon Bledsoe Sr., is resident of Crittenden County of the Eastern District of Arkansas and Nucor-Yamato Steel Company is a foreign corporation with it principle place of business in Mississippi County of the Eastern District of Arkansas.

Raymon Bledsoe Sr. was employed by Nucor-Yamato Steel Company for 6 (six) years when he was discriminated against and terminated for engaging in protected activity as it relates to *Eva v. Kansas City School Dist,* 65 F. 3d 98, 100 (8th Cir. 1995) certi. denied 517 U. S. 1104, 116 S. Ct. 1319, 134 L. Ed 2d 472 (1996). An employer may not discriminate against an employee because the employee "has opposed any practice made unlawful employment practice, 42 U. S. C. A. 2000e-3(a).

Raymon Bledsoe Sr. filed charge of discrimination against Nucor-Yamato Steel Company with the EEOC on March 8, 1999 and filed complaint against Nucor-Yamato Steel Company on June 3, 1999.

Plaintiff reserved all rights under any motions filed previously concerning jurisdiction and transfer in First Amended Complaint.

The District Court has jurisdiction over this cause of action

Appendix E

and the parties hereto, and venue is proper.

UNITED STATES COURT OF APPEAL FOR THE EIGHTH CIRCUIT

Cause 42 :2000e - Job discrimination and employment

Relevant Facts - The U. S. District Court for the Eastern District of Arkansas granted summary judgement order for Defendant Nucor-Yamato Steel Company on October 23, 2000.

U. S. District Court for Eastern District of Arkansas is within the Eight District Court of Appeals jurisdiction.

An appeal of the U. S. District Courts Order granting summary judgement for Nucor-Yamato Steel Company was appealed by Mr. Bledsoe from the U. S. District Court by Mr. Bledsoe on November 21, 2000 establishing jurisdiction in the Eighth Circuit Court of Appeals.

UNITED STATES SUPREME COURT

The judgement of the United State Court of Appeals for the Eighth Circuit was entered on August 30, 2001. The United States Court of Appeals for the Eighth Circuit denied a timely petition for rehearing in an Order dated October 30, 2001.

This Petition is filed within ninety days of the United States Court of Appeals for the Eighth Circuit's denial of rehearing and therefore, this Honorable Court has jurisdiction of this Petition by virtue of 28 U. S. C. § 1254(1).

APPENDIX F – 42 U.S.C.A. § 2000e-5(e) and (f)

(e) Time for filing charges; time for service of notice on respondent; filing of charge by Commission with State or local agency; seniority system

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue on United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

APPENDIX G – JUNE 29, 1998 LETTER FROM RAYMON BLEDSOE SR. REQUESTING EXERCISE OF FINAL STEP OF NUCOR YAMATO STEEL'S COMPANY COMPLAINT PROCEDURE RECEIVED ON JUNE 30, 1998.

Raymon Bledsoe
710 Johnson Dr.
West Memphis, AR. 72301

June 29, 1998

Mr. Mike Gurley, Melt Shop Supervisor
Nucor-Yamato Steel
P. O. Box 1228
Blythville, AR. 72316

RE; 6/26/98 and 6/27/98 Suspension and Notice.

Mike Gurley
This letter is in reference to the above stated notice and suspension. In this letter I was suspended with the lost of production bonus primarily on the basis of allegations made by Albert Dyer which amount to hearsay.

When you approached me on 6/22/98 regarding this matter, you stated that Albert, Jess Garner, you and myself would meet on 6/26/98 to further discuss the matter. In a meeting with Jess Garner a few minutes later, he also indicated that the four of us would meet. Mr. Garner came to our work area on the morning of 6/26/98 and made the same statement again. But when Mr. Garner came over that afternoon to get me for the meeting we passed by Albert on our way to your office. Why wasn't Albert asked to come to the meeting in order to support the allegations made by you and Mr.

Appendix G

Garner?

You made reference in your notice and the meeting that I had a problem with "suggested direction from a fellow employee with more job experience". As it relates to Albert, I respect him for the time that he has been in refractory but when he violates practices taught to me by him and practices known to the rest of refractory and the ladle wall, for safety reasons to the men on the caster and the productivity of Nucor-Yamato Steel I have the responsibility as an employee of this mill to inform [redacted] and anyone else of possible problems.

This is not only based upon my 1.5 years of experience in refractory as a "bricker" but is also based upon my 4.5 years of experience on the furnaces where I have seen ladles wash through the sides while a heat was being tapped into it. Fortunately they didn't wash out on the caster. Mike, I have 6 years of compiled experience that allows me to view areas in refractory in a much broader since than Albert. Albert has a personal problem with that position to the extent that he becomes very upset when questioned.

On 6/21/98 when he bricked a whole ladle by himself, he bricked it without the required stands that were in the ladle that I was in. The one Mike that you guys could not agree on which had priority. Due to the fact that he had no stands, Albert left a bare spot on the slag line at 12 o'clock approx. 3 ft. from the top. He bricked over this spot without putting the necessary amount of ladle-vibe behind the brick.

This situation is so out of hand that I was afraid to say anything about it due to his temper when advised.

Appendix G

In my letter to Nucor dated 6/15/98, I indicated in paragraph three of page two that "the tundish was hot when I cleaned it out and set the plates". I worked on this tundish by myself. Albert was not working on a ladle but sitting down. I am often put in this position in order to make sure that we have adequate tundishes and ladles. I have worked alone many times as Albert used company time to council members of his church. I bricked a ladle alone 3 weeks ago.

As for as sleeping on the job is concerned. Mr. Garner told us in one of our morning meetings that it was beneficial in taking a short nap. But several other people have also been reprimanded for sleeping on the job within the past weeks.

As to the counceling sessions referred to in your notice, the first two were spent basically trying to find out what our priorities are and the equal distribution on work which are made reference to in my 4/27/98 letter to Nucor. As for my session with Dan on 5/18/98, his suggestion was to not let Glenn Browns actions affect my work.

As to your reference to an inaccurate statement regarding my meeting with Dan on 5/18/98. I requested a meeting with Dan on 4/2798 and did not get that meeting with Dan until 5/18/98 which was twenty-two days later. The insubordination charge was 5/12/98 six days before I talked to Dan. I hope that there is no more confusion regarding this.

Mike I have been written up for the same incidents twice. Conduct/insubordination 5/12 and again by you on 6/26. Work performance/tundish plates 5/13 and again by you on 6/26. Work performance/sleeping 4/18 and by you again on 6/26. I believe that this is excessive Mike.

Appendix G

I believe that the real reason for the suspension was my questioning management in areas such as the harassment of employees by Glenn Brown and the lack of written guidelines so that priorities and goals can be set for all the people in refractory. I have requested a computer for refractory so that not only would our record keeping be more accurate but so that we might have some accountability which is what you emphasized in your first safety meeting with our crew.

This is not the same Nucor-Yamato Steel that I began employment six years ago when we struggling to make the million plus tons a year. Every aspect of this operation was open for constructive criticism. Mike, I have been apart of two furnace records on number one furnace that have proven to the rest of the crews that those once imagined goals could be met in tap to tap. I have offered ideas that have and could make our work in refractory a lot easier.

As I mentioned to you and Jess on 6/26/98, I overcame the racist remark that John Bell made in reference to me being hired as a quota in order to fulfill the minority mandate of the federal government prior to hiring me as utility man on the furnaces.

I overcame Donnie Crums open insult of my wife and children in their presence as I tried to introduce him to them. I worked for Donnie for 4.5 years.

I am working for Jess Garner who has been called a racist by one of our fellow employees. While I have my concerns also, I have tried to give Jess the benefit of a doubt.

You spent much of your time in our safety meeting stating

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that you are not the same person that you were 10 years ago. While I have my concerns I have also given you the benefit of a doubt because I have seen Mike Gurley in a neutral environment. I encouraged you to seek the job as melt shop manager.

As a member of the IS0 9002 team I volunteered my experience in quality control and my time to make sure that Nucor-Yamato remains the leader in the industry.

Mike I have overlooked and accepted a lot of garbage since my employment at Nucor but as I stated to you and Jess, I demand my respect as citizen of this great country that we live in and as an employee of Nucor-Yamato Steel.

I have given Nucor-Yamato my best for the past six years and after three weeks on the job you say that it is not good enough. I am not employed by Nucor-Yamato to make every bodies day a happy one although I try. I am hired by this company to brick tundishes and ladles and brick them safely.

This situation has gotten out of hand and it has began to affect me physically as well as mentally.

I am requesting that I exercise the final step of our open door policy by informing our cooperate offices of this matter.

Respectfully,
s/ Raymon Bledsoe
Raymon Bledsoe
cc. Rlb.

Certified Letter #280 309 912

APPENDIX H – OCTOBER 27, 1998 LETTER TO THE LITTLE ROCK EEOC OFFICE REQUESTING FINALITY AND RECONSIDERATION FILE STAMPED BY THE EEOC ON OCTOBER 28, 1998.

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

October 27, 1998

Equal Employment Opportunity Commission
Little Rock Area Office
425 W. Capital, Suite 625
Little Rock, AR. 72201

Dear Representive

This letter is in reference to my dismissal from Nucor-Yamato Steel of Blythville, AR., as well as the telephoned conversation with Ms. Christine Wilson on September 15, 1998 at approx. 10:00 a.m.

I requested the necessary forms from your office via telephone on August 6, 1998 for to complete for information regarding my dismissal.

I received those forms. I completed the forms and I also enclosed certified documents that I feel add more support to my claims.

Ms. Wilson from your Memphis Office responded in writing requesting the opportunity to discuss my situation in more detailed letter dated September 8, 1998.

Appendix H

I attempted to contact Ms. Wilson on September 14 and successfully contacted here via phone on Sept. 15.

My more detailed discussion of my situation resulted in a conversation which lasted less than ten (10) minutes when she concluded that I had no grounds for filing a charge with EEOC.

This not an effort to defame Ms. Wilson and or her qualifications as an investigative support assistant. I feel that the information that I submitted to your office carried more weight and more validity than our brief conversation exposed.

In your pamphlet entitled The Charging Party, Your Rights and Responsibilities on page one (1) THE LAWS it states:

Title VII Prohibits——

Discrimination because of race, color religion, sex or national origin. All employment practices are affected, including hiring, firing, layoffs, promotions, wages, training, disciplinary action and other terms, privileges, conditions of benefits of employment.

The information submitted to your office along with the copies of certified documents lend overwhelming support to the affected employment practices of hiring, firing and disciplinary action.

I was employed with Nucor-Yamato Steel for a period of six (6) years commuting 145 mile per day with a excellent work record. There is no support for my termination other than a

new melt shop manager wanting to make an example by firing me.

Since my conversation with Ms. Wilson, I have not received any documentation from your office or her Memphis Office regarding your findings and or my rights to seek relief with an attorney of my hiring and the time frame in which I have to litigate this case.

It is my hopes that your office would review the information submitted to you and render a decision. Thank you for your time and patience.

Respectfully,
s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.

APPENDIX I – JANUARY 29, 1999 LETTER TO THE LITTLE ROCK EEOC RECEIVED FEBRUARY 1, 1999 REFERENCING THE OCTOBER 27, 1998 LETTER TO THE EEOC.

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301
Home 870-732-0269
Mobile 870-243-3306
Pager 800-338-4839 pin 1042

January 29, 1999

Equal Employment Opportunity Commission
Little Rock Area Office
425 West Capital Office, Suite 625
Little Rock, AR. 72201

RE: Request for confirmation
To Whom It May Concern

I mailed a letter to your office dated October 27, 1998. A copy of that letter has been enclosed. In that letter, I requested another review of my allegations against Nucor-Yamato Steel of Blythville, Arkansas.

I have not received any information from the Memphis nor the Little Rock Area Offices indicating acceptance or denial of my claims. As you know, the element of time is of great importance to me if I am able to seek my own counsel and file a suit against the above stated company.

I am requesting a letter of confirmation of the enclosed letter.

Appendix I

Respectfully,
s/ Raymon Bledsoe
Raymon Bledsoe

Certified Mail # Z 490 626 675

Supreme Court, U.S.
FILED

011474 JAN 28 2002

OFFICE OF THE CLERK

APPENDIX

APPENDIX J – JUNE 1, 1999 LETTER TO THE LITTLE ROCK AREA OFFICE OF THE EEOC — EXHIBIT #21 OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGEMENT

Raymon L. Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

June 1, 1999

Mr. Kenneth Collins, Supvr.
E.E.O.C.
Little Rock Area Office
425 West Capital, Suite 625
Little Rock, AR. 72201

Mr. Collins,
This letter is in reference to my telephone conversation with you on May 13, 1999 at 3:15 p.m.

I would like to thank you for paging me regarding my Certified Letter #Z 490 626 678 to your office dated May 5, 1999. You explained why your office did not conduct an interview with Nucor-Yamato Steel and or its representives as well as how your office arrived at its decision and its unwillingness to represent me in my claims of discrimination and harassment.

However, after much investigation of my own regarding Title VII of the Civil Rights Act of 1964 and the EEOC Compliance Manual as it relates to Section 8 and Retaliation, my research revealed the following:

Shortly after my employment with Nucor-Yamato Steel, I was

Appendix J

considered for a post as utility man on the furnaces I was interviewed by the then Melt Shop Manager-Mr. John Bell. Mr. Bell began the interview by telling me that I was being interviewed for the position in primarily to fulfill the minority mandate of the Federal Government. This is stated in the Statement of Fact, Certified Mail #P 280 309 912 in paragraph 1(one) of pages 3 of 3. Article no. 21 of the contents of Nondisclosure information.

In talking to other blacks who worked in the melt shop, they stated that he made the same statement in their interviews.

Mr. Collins, in Sec. 2000e-2 [Section 703] section (a) subsection (2) of Unlawful Employment Practices as it relates to Title VII of the Civil Rights Act of 1964 states:

(a) It shall be an unlawful employment practice for an employer -

> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect status as an employee, because of such individual' race, color, religion, sex, or national origin.

Mr. Collins, I will show how this violation of classification limited my employment with Nucor-Yamato Steel . When I complained about discrimination to management harassment manifested itself in the form of retaliation creating "a hostile work environment" which resulted in the termination of my employment with Nucor-Yamato Steel.

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I applied for two(2) First Helper positions within the melt shop. The first of which I was required to and tested for. I was tested on one of my days off and required to take the test in the conference room of the melt shop offices.

During the testing process, I was interrupted by Mr. John Beaton then melt shop manager as well as an employee with the cleaning services. The door was open to the hall where day to day activities occurred without consideration of my efforts to complete the test.

The successful candidate, Mr. Steve Jackson took the test on a Sunday morning when the offices were empty with little or no supervision. Mr. Jackson is a white employee who I helped train for his position.

At Nucor-Yamato Steel, when the successful candidate is selected for a position, it is the responsibility of the department manager to arrange times when he can sit with the unsuccessful candidates and explain why they did not get the job. After numerous personal requests to Mr. Beaton, he would not grant the interview. It was only when I expressed to other coworkers that the decision was racially biased that Mr. Beaton called me into his office and scolded me for making the statement.

My concern was the test scores and how he arrived at his decision. His response was that there were no right or wrong answers but my test score was very low and he provided no key to the answers that I could use to qualify answers that he was looking for in the test. These inconsistantcies are a violation of Title VII of the Civil Rights Act of 1964, Sec. 2000e-2. [Section 703] of Unlawful Employment Practices,

subsection (L) which states:

> It shall be an unlawful employment practice for a respondent, in connection with the selection of referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

Having been a former educator Mr. Collins, I know that there is an evaluative purpose in the implementation of tests.

The second position of first helper as awarded to Mr. Bill Sadler, who is also white. I was more qualified than he in experience and education.

I applied for a supervisory position as melter within my department in December of 1995. I requested the required Sears Exam- a psychological evaluation required for all management prospects. Candidates who take the examination are evaluated by their supervisor and Mr. DiMicco. My immediate supervisor went over the results with me but I did receive an interview from the department manager nor Mr. DiMicco.

The results of this evaluation were not a concern of management until June 29, 1998. Two and one half (2 ½) years later Mr. Collins when Mr. Mike Gurley utilized it in the form of an "adverse action" days prior to my termination.

After four (4) years of working on the furnaces, I realized that there was no possibility of promotion on the furnaces. This

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feeling was due to the discrimination and harassment that I had experienced.

Harassment on the furnaces manifested itself in actions of my supervisor-melting foreman Mr. Donnie Crum who required me to work on and the furnace deck for excessive periods of time. Exposing me to excessive dangers and the noise of the furnace. One result of which a is severe hearing lost.

Other concerns regarding Mr. Crums behavior are explained in Statements of Facts, Certified Mail # P 280 309 915 and # P 280 309 912. Articles 20 and 21 of the Nondisclosure information. Mr. Crum also referred to a former black employee as "that boy".

At that time, an opening was available in the refractory department. So I applied for the position and was awarded it. This was not a promotion but a lateral move in pay grade and salary.

My first week in my new position, Mr. Glenn Brown-B Crew casting foreman made the statement to my new coworker, Mr. Albert Dyer, that "he heard that I was lazy".

This remark was unjustified in that I left the furnaces with an excellent work record. The harassment by Mr. Brown became so obvious my first week that I called on the radio and asked to meet him after work in the melt shop office.

In this meeting, I explained to Mr. Brown that I knew that he was harassing me. He remarked to my statement by saying " When I come after you you will know it", suggesting to me further intent on his part to harass me to the point of possible

termination.

As indicated in Statement of Fact, Certified Mail # P 280 309 916. Article 19 of the Nondisclosure information paragraph two (2) of page 2, Mr. Brown had a five (5) year pattern of harassment prior to work in the refractory area.

After I had obtained the position in refractory, I learned from my coworker Mr. Dyer that Mr. Brown had developed the reputation in that area as being the supervisor that Nucor-Yamato management would send employees to when they wanted to terminate them.

Mr. Collins **EP-22,202.** Types of unlawful harassment under federal law describe "hostile work environment as:

> A "hostile work environment" harassment claim involves a pervasive atmosphere **(EP-22,214)** of severe **(EP-22, 215)** or unwelcome **(EP-22,217)** working conditions that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.21 This situation is variously referred to by the courts as a "condition of work,"22 a "discriminatory work environment,"23 "a hostile and offensive atmosphere,"24 or "an intimidating, hostile or offensive working environment."25
>
> Furthermore, a "hostile work environment" claim may be used as part of the proof of another form of job discrimination, such as constructive dis- charge **(EP-22,211).**

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While on the furnaces I began to experience some of the elements contained in the above definition of hostile work environment but they became more prevalent shortly after my transfer to the refractory area by members of management.

Concerns regarding the hostile and offensive atmosphere are indicated in all of the Statements of Facts, Articles 19, 20 and 21 of the Nondisclosure information along with Statement of Fact, Certified Mail # P 280 309 911.

Statements of the fact that relating to my work environment are stated as early as December 1995 in paragraphs two and three of page three of my Sears Evaluation.

The same concerns were expressed in the May 1998 Sears Evaluation of which Nucor-Yamato Steel has refused to provide copies. The request for this information have been made prior to and since my termination.

The work environment as early as March 3, 1998 had become so intimidating that in a meeting with Mr. Jess Garner-refractory supervisor, I asked for help in being able to cope with the situation. I did not receive any advice or information.

In a meeting on May 18, 1998, I communicated the same feelings to Mr. DiMicco-plant manager and he told me to not let Glenn Browns actions affect my work. No assurances that any corrective actions on Mr. Browns part were indicated.

On the evening of April 18, 1998, we were having our daily shift meeting before work when Deborah Devalcour-crane operator expressed safety concerns about operating her crane

during the night of the devastating storm that destroyed Manila, AR. When she asked Mr. Brown why she was required to work under such conditions, he became upset with her. I verbally expressed my agreement with her and he concluded the conversation by saying that he was going to "take this shit anymore". That evening Mr. Brown began a concerted effort to further harass and intimidate me.

Mr. Collins, the following incidents were listed as reasons for my termination:

> 1. I was written-up for insubordination when I refused to meet Mr. Brown after work as explained in the Statement of Fact, Certified Mail # P 280 309 915, Article 20 of the Nondisclosure information.
>
> 2. My work performance suffered as a result of the constant harassment and I was written-upfor that as explained in Statement of Fact, Certified Mail # P 280 309 912, Article 21 of the Nondisclosure information.
>
> 3. Mr. Gurley indicated that refusal to work professionally with other employees.

EP-22,212. When does proof of harassment excuse the claimant's misconduct states:

> Employee work inadequacies may also be justified by having suffered prior harassment and by an employer's inadequate response to harassment. For instance, Title VII is violated where an employee is discharge because of absenteeism and he can show that:

(1) he communicated his fears to the employer and expressed a willingness to cooperate in correcting the situation; and

(2) the employer failed to take appropriate remedial measures.81

A discharge based on an "inability get to along with others" violated Title VII when supervisors were aware of racial disharmony and terminated a black employee rather than investigate it.82 A termination for poor work performance was also illegal when

performance was affected by the physical stress disorders the victim suffered as a result of religious harassment and retaliation by his supervisor, when the employer failed to take corrective action against the supervisor, or to grant the employees request for transfer to another work area.83

Mr. Collins, I verbalized my concerns regarding racism to management. Rather than investigate my concerns, Nucor-Yamato Steel decided that the best way to deal with my concerns would be by terminating me.

Mr. Gurley's statement the "he was not going to have me bad mouthing management" as described in Charge of Discrimination Form lends further support to my claims.

According to Section D. of the EEOC Compliance Manual, 8-II. Elements of a Retaliation Claim titled Adverse Action, Subsection 1. General Types of Adverse Actions states:

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> The most obvious types of retaliation are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension and discharge. Other types of adverse actions include threats, reprimands, negative evaluations, harassment, or other adverse treatment.
>
> Suspending or limiting access to an internal grievance procedure also constitutes an "adverse action."

According to the Nucor-Yamato Steel Company Employees Handbook, Complaint Procedures on page B-28 states the following:

> Any employee having a misunderstanding or complaint concerning work conditions, procedures, policies, or anything relative to work, should follow the method of resolving the problem as set out below:
>
> Step 1. Discuss the matter with your Supervisor. Your Supervisor will attempt to settle the matter. The Supervisor must give the employee an answer or settle the problem satisfactorily within three (3) working days.
>
> Step 2. If answer is not received from the Supervisor within three working days, or if the employee is not satisfied with the answer or settlement, the employee may request a meeting with the Department Manager who will attempt to satisfactorily settle the complaint or problem with five (5) working days.
>
> Step 3. If a satisfactory answer is not received from

the Department Manager within five (5) working days, the employee may submit the complaint, in writing, to the Department Manager who will make a final decision on the matter and advise the employee, in writing, within five (5) working days of receipt to the written complaint.

Step 4. If a satisfactory answer is not received from the General Manager, the employee may submit the matter to the President of the Company. The President shall discuss the problem with the General Manager and together they shall provide an answer as soon as practical.

I exercised the complaint procedure as outlined but was denied an opportunity to have my issues addressed by the President of the Company.

I requested that opportunity in the Statement of Fact, Certified Mail #280 309 912 in the final paragraph of pages 3 of 3 on June 29, 1998.

This was also stated in section six (6) of the Charge Information Form (page 2) which was mailed to your Little Rock Area Office-article no. 18 of the contents of the envelope containing the Nondisclosure information.

Another violation regarding the adverse action clause occurred when I made a request to talk to Dan DiMicco, Plant Manager to Jess Garner, Refractory Supervisor on April 27, 1998.

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I was not afforded the opportunity to discuss the matter with Mr. DiMicco until May 18, 1998 which was twenty-two (22) days after the request. This is in violation of the rules as set forth in Step 3 of the company complaint procedure. Mr. DiMicco did not respond promptly and properly to my request.

I was also subjected to further harassment by Glenn Brown-Casting Supervisor on May 12, 1998 when he requested a meeting with me after work. Due to my concerns regarding Mr. Browns state of mind and the fact that Mr. DiMicco had not responded to my April 27th request, I refused to meet with him after work. I was written up for insubordination by Mr. Brown.

This violation also relates to III. Casual Connection, Subsection B. of the EEOC Charge Processing Outline regarding circumstantial evidence in that the decision-maker was aware of the protected activity before undertaking the adverse action.

This request was made in Statement of Fact, Certified Mail #P 280 309 916 in the final paragraph of pages 2 of 2. Article no. 19 of the contents of Nondisclosure information. The letter was received on April 29, 1998 by Nucor.

After I was written-up for insubordination regarding the above incident, on May 28, 1998, Mr. Brown called me again on the company radio and told me to meet him after work. Mr. Brown raised five (5) issues. Four (4) of the issues raised by Mr. Brown by his own admission were not relevant to my employment with Nucor. I asked him why he we having the meeting and his response was that "Dan-Mr. DiMicco wanted

him to have a meeting with me."

In the meeting, Mr. Brown indicated that he wanted a "more than work relationship" which is discussed in paragraph 5 of Statement of Fact, Certified Mail #P 280 309 911 pages 2 of 2. This is the information that you said you located after my May 5, 1999 letter to your office and it represents another violation the above Casual Connection Clause.

Mr. Collins, there are some inconsistantcies regarding how your office arrived at your decision in such a short period or time.

You indicated some of your colleagues in your office arrived at your decision in a staff meeting. There was no documentation mailed to me in your envelope of information received on May 4, 1999 regarding the staff meeting. Furthermore, in the Dismissal and Notice of Right where the EEOC is closing its file on this charge for the following reason, it indicates:

> The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

Mr. Collins, The World Book Dictionary defines investigation as:

> Investigation, n. a careful search; detailed or careful

> examination. Syn. Investigation, examination, inquiry mean a search for information or truth. Investigation emphasizes a careful and systematic search for facts, especially one carried out by officials: Examination emphasizes a search for facts by inspection: Inquiry especially suggests a search for facts made by asking questions.

Black's Law Dictionary with Pronunciations, Abridged Sixth Edition defines investigate as:

> Investigate. To follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine or inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry. *See also* Discovery; Inspection.

Mr. Collins, the implied meaning and understanding of the word investigation would be a combination of both definitions. Your staff meeting and conclusion regarding my allegations against Nucor-Yamato Steel can hardly be defined as an investigation. So your statement of reason in the dismissal and notice of rights is misleading Mr. Collins.

After having supplied you with documented proof of my claims as it progressed during my employment with Nucor and your office arriving at such an abrupt decision, you would actually have difficulty proving intent on your part to investigate my claims.

I was denied a personal interview by both EEOC offices over this 8 (eight) month period. Mr. Collins, I have a degree in

education and would have been more than capable of talking with you and or your staff and disclosing other information relevant to my claims.

Your office was availed with my phone and pager numbers and the only time that you took advantage of that was Thursday, May 13th. after I expressed concerns in my May 5, 1999 letter to your office.

There appears to have been a rush to judgement on the part of both the Little Rock and Memphis offices with a flagrant disregard of my rights in this case.

I stated on Thursday during our telephone conversation that I felt that the EEOC had "dropped the ball" in this situation. I have suffered finacially and emotionally as a result of the unsubstantiated termination of my employment with Nucor-Yamato Steel. And to have endured the lack of concern that the EEOC, a federal office whose sole responsibility is that of the protection of my civil rights as an employee. This has compounded that humilation.

Mr. Collins, I suspect some irregularities in both the Memphis and Little Rock Area Offices regarding this case. I am at this juncture prepareing to personally confide in legal counsel with regards to this issue.

At this point, I am appealing your March 10, 1999 decision to the United States Attorney Generals Office on the basis possible lack of intent in the investigation of my claims by both offices and due to the fact that your March 10th decision could prejudice any verdict by a jury in my suit.

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I am also requesting the assitance to both the Arkansas and Tennesee State Attorney Generals Offices. While your office is federal, what I suppose as violations occurred in both states.

Mr. Collins, I want to understand why this has happened to me. I did not ask for a favorable ruleing regarding my claims but I did expect the EEOC to conduct an impartial investigation and thereby arrive at a ruleing.

This 8 (eight) month ordeal has only yealded what amounts to a maybe 2 hours of converstion on the part of EEOC.

Respectfully,
s/ Raymon Bledsoe Sr.
Raymon L. Bledsoe Sr.

copies. Arkansas State Attorney Generals Office
Tennesee State Attorney Generals Office
United States Attorney Generals Office
Kay Klugh, Director
Rlb.

Certified Mail #Z 490 626 679

APPENDIX K – JUNE 11, 1999 LETTER FROM LITTLE ROCK AREA DIRECTOR REFERENCING REFUSAL OF RECONSIDERATION AND MISLEADING MR. BLEDSOE REGARDING THE 90 DAYS TO FILE SUIT

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Little Rock Area Office

425 West Capital Avenue, Suite 625
Little Rock, AR 72201
(501) 324-5060
TTY (501) 324-5481
FAX (501) 324-5991

June 11, 1999

Raymon L. Bledsoe, Sr.
710 Johnson Drive
West Memphis, AR 72301

RE: Bledsoe v. Nucor - Yamato Steel Co.

Dear Mr. Bledsoe:

Your request for reconsideration of the dismissal and issuance of the Notice of Right to Sue on the above referenced charge was received in this office on June 3, 1999. I have determined that I will not reconsider the issuance of this Notice of Right to Sue.

The Notice of Right to Sue was issued to you as a result of a decision that further investigation of the charge will not result in a determination that one of the laws enforced by EEOC has been violated. The additional

information you submitted does not change that decision.

Further, your request for reconsideration was received three working days short of the 90 day time period required for you to file suit. The law requires that you file suit in Federal District Court before the 90 days expires. If, as here, you failed to file suit within the 90 day statute of limitation, you lose your ability to proceed on the subject charge. Once a Charging Party loses his right to obtain remedy under one of the laws this Agency administers, EEOC is effectively barred from proceeding on behalf of that individual. Given the above, it would serve no purpose to reopen the charge, and the Agency cannot set aside the Notice of Right to Sue after the 90 days has run. Therefore, I am not able to reconsider or reopen the charge as you request.

Sincerely,
s/ Kay Klugh
Kay Klugh
Area Director

APPENDIX L – JUNE 14, 1999 LETTER TO THE LITTLE ROCK EEOC AREA DIRECTOR CORRECTING MISLEADING 90 DAYS TO FILE SUIT INFORMATION

Raymon L. Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

June 14, 1999

Kay Klugh, Area Director
E.E.O.C.
Little Rock Area Office
425 West Capital, Suite 625
Little Rock, AR. 72201

Ms. Klugh,

This letter is in response to your letter addressed to me dated June 11, 1999.

You were apparently misinformed regarding the intent of my letter to your office dated June 1, 1999. The research that was submitted to your office and the concerns that I expressed regarding your offices inadequate investigations of my claims against Nucor-Yamato Steel were not meant to be construed as a reconsideration of the dismissal and issuance of the Notice of Right to Sue.

The purpose of that letter as this one is that of my intent to inform both respective Attorney Generals Offices in the states of Tennessee and Arkansas as well as the United States Attorney Generals Office of irregularities within your respective offices.

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I must correct you Ms. Klugh regarding the 90 day period required for me to sue. I have enclosed a copy of the Dismissal Notice of Rights and as you can see, it is dated March 10, 1999. I received the notice by mail on March 12, 1999.

According to my calendars Ms. Klugh, the 90 days required to sue would end on June 10, 1999. You received my letter June 3, 1999 and I filed suit against Nucor-Yamato Steel in United States District Court, Eastern District of Arkansas also on June 3, 1999 which date is well within the required 90 days. So your assumptions as well as your calculations are wrong Ms. Klugh.

Ms. Klugh, I am not a lawyer but this latest act by you as well as the unusual occurances within your offices over the past 8 (eight) months could easily be construed as "obstruction of justice." However, I will leave that determination to the above mentioned Attorney Generals Offices as well as legal remedies that I plan to seek in court.

Your letter along with other documentation related to this situation will be forwarded to the above respective offices.

I have enclosed a copy of my court complaint per the requirements described in Destruction of File of Filing Suit Under Title VII of the Civil Rights Act or the Americans with Disabilities Act.
Thank you for your concern Ms. Klugh.

Respectfully,
s/ Raymon L. Bledsoe Sr.
Raymon L. Bledsoe Sr.

Appendix L

cc. Arkansas State Attorney Generals Office
Tennessee State Attorney Generals Office
United States Attorney Generals Office
Rlb.

Certified Mail # P 280 309 914

APPENDIX M – AUGUST 30, 2000 LETTER TO COUNSEL FOR NUCOR YAMATO STEEL COMPANY REFERENCING INTENT TO COMPEL NUCOR TO COMPLY WITH DISCOVERY.

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

August 30, 2000
Via Express Mail

Nicole A. Sargent
Alaniz and Schreader
16010 Barkers Point Lane, Suite 500
Houston, Texas 77079

RE: Civil Action No. J-C-99-220; *Raymon Bledsoe Sr., v. Nucor Yamato Steel Company,;* In the District Court of the Eastern District of Arkansas, Jonesboro Division.

Ms. Sargent:

This letter is in response to your August 25, 2000 letter. As you know I have made numerous requests for the Production of Documents as it relates to Plaintiffs Joint Third Request for Production to Defendant.

You are correct in your assertion that Defendant has produced more than 350 documents but as you know these productions relate only to the personnel file of Plaintiff. However, through 2 requests prior to the third request for production, Plaintiff has requested the production of the personnel files of supervisors of Defendant. Upon each of the three requests **Defendant has objected to and denied the**

production of these documents so you are incorrect in your claims that you have fully complied with Plaintiffs requests. As learned counsel knows, these files are discoverable.

Plaintiff has also requested statistical information regarding the racial make-up of employees of Defendant. Upon each request **Defendant has objected to and denied the production of these documents.** These documents are also discoverable material and Defendant has had 8 (eight) months to prepare this information.

Plaintiff has requested the production of documents as it relates to previous litigation and complaints of discrimination by employees of Defendant which is also discoverable information as it relates to this suit and **Defendant has objected to and denied the production of these documents.**

Defendant has objected to and denied the production of other documents that Plaintiff has requested.

Ms. Sargent, you and I know that the claims in this case do not represent an isolated incident of racial discrimination. Defendant has an established "history" of discrimination not only within the confines of employment but also within the community that Defendant does business in.

Ms. Sargent, the above requested information as you know is crucial to Plaintiff to prepare for trial and is discoverable. These requests as you know will provide a broader foundation for Plaintiffs claims of unfair promotional practices, harassment, patterns and practices of

discrimination. These requests do not represent a search in the dark. This information does exist and Defendant is required to comply with the rules in the production of this information.

As learned counsel for Defendants, you have been aware of the specific issues as is relates to these requests and Defendants failure to produce said requested documents have accomplished nothing and represents **8 (eight) months** of delay for Plaintiff in preparation for this suit. However this is consistent with misrepresentations of information to the court, coercion by co-counsel Mr. Linker with the threat of a psychological evaluation if Plaintiff did not change tort claim against Defendant as well as other deeds that are worthy of sanctions by the court. Any disputes that you might have with the substance of these issues should be left to any response(s) that you might have in objection to the Motion to Compel.

Plaintiff has cooperated with Defendant in responding to 2 (two) sets of interrogatories and requests for admissions and a voluminous 2 (two) day deposition. The information that you relate to in your letter will be forwarded to you if I have possession of it. That is not the issue here.

Ms. Sargent, I have followed the requirements of the rules in requesting production of said documents and narrowly tailoring those requests so that Defendant would know what the specific issues were. Defendants have not cooperated fully and objected to a majority of the requests which Defendants have a right to do. In turn I have indicated to you my intent to compel which is in line with procedure. So your assertion that my notices to you of my intent of filing a Motion to Compel is a threat is wrong and unfounded. I am

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only following the rules of law.

This game of tag has been costly for me in preparing for this trial. I have explained to you the specific issues of Plaintiffs Third Joint Request for Production of Documents to Defendants which will be the basis to Plaintiffs Motion to Compel. As you know, I have made a Fourth Request for Production of Documents to Defendants and time is of the essence. Having fulfilled the "good faith" aspect of the specific issue or issues in dispute as it relates to Local Rule C-7, the subject is now closed for further discussion. I am prepared to file the Motion to Compel.

You have until 12:00 p.m. September 4, 2000 to respond.

Respectfully,
s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, Arkansas 72301
(870)732-0269
Pro Se

APPENDIX N – MOTION TO COMPEL NUCOR YAMATO STEEL COMPANY TO COMPLY WITH DISCOVERY DATED AND FILED SEPTEMBER 11, 2000.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

RAYMON BLEDSOE, SR., Plaintiff/Petitioner

v. Civil Action No. J-C-99-220

NUCOR YAMATO STEEL CO., Defendant/Respondent

MEMORANDUM IN SUPPORT OF PLAINTIFFS MOTION TO COMPEL NUCOR YAMATO STEEL COMPANY TO COMPLY WITH DISCOVERY

Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, Raymon Bledsoe Sr./Plaintiff, respectfully submits this Memorandum in support of his Motion to Compel Nucor Yamato Steel Company/Defendant to comply with the plaintiffs Third Joint Request for Production of Documents and Plaintiff's Fourth Request for Production of Documents to Defendants.

Plaintiff has consulted with counsel for Defendant and has been unable to resolve this matter. However, in the course of the discussions, the parties agreed to raise with the Court the underlying issue of whether or not the Request for Production of Documents are relevant to the scope of the allegations in this case. Accordingly, Plaintiff submits this Memorandum in support of his position that Defendant Nucor Yamato Steel Company, its employees and or its agents due to race, in

violation of Title VII of the Civil Rights Act of 1964, discriminated against him in its employment practices.

I. BACKGROUND

On December 2, 1999, Plaintiff served Defendants with First Request for Production of Documents which was the result of a subpoena that Defendant agreed to treat as First Request for Production. Among these requests for production were 1) personnel files (personnel and melt shop) 2) documents relating to Sadler and Associates, Inc. psychological reports conducted by Dr. Sears 3) documentation related to and surrounding fire and shut down of NYS II caster on or about August to September of 1998 and 4) Reports regarding racial make-up of employees.

On or about December 29, 1999, Defendant served its objections and refused to produce the requested documents on various grounds including overly broad, confidentiality and relevance. However, Defendant submitted documents from Plaintiffs personnel file with the exception of Plaintiffs resume and other documents relative to Plaintiffs personnel file.

On December 22, 1999, Plaintiff served Defendant with Plaintiff Raymon Bledsoe Sr. Second Request for Production of Documents requested documents relative to personnel files and Sears examinations of employees of Defendant and fire at NYS II castor. On January 12, 2000, Defendant submitted objections of overly broad, inadmissibility and vague.

On January 10, 2000, Plaintiff made Second Request

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for Production of Plaintiff which included tape recordings and items missing from Plaintiffs personnel file. Defendants responded with objections to requests stating attorney client privilege, overly broad and admissibility. However, Defendant did serve Plaintiff with some of the missing items from Plaintiffs First Request for Production of Documents such as requested test results.

February 22, 2000, Plaintiff served Defendant with Plaintiffs Joint Third Request for Production of Documents to Defendant. Among the requests for production were specific and narrowly tailored requests for personnel files and Sears reports of employees of Defendant and lawsuits related to racial discrimination by Defendant. Defendant responded on March 23, 2000 with the usual objections of overly broad, attorney client privilege, etc., *see Attached Exhibit No. 1.*

Plaintiff communicated need for production with Defendant in June and August letters to Defendants explaining that documents are crucial to trial preparation, *see attached Exhibit No. 2.* Counsel's for Defendant excuse was knowing the specific issues of Plaintiffs requests. If Plaintiff was any more specific would require work product of Plaintiff.

Plaintiff served Defendant with Fourth Request for Production on August 30, 2000, *see attached Exhibit No. 3.* On September 1, 2000 counsel for Defendant stated in letter that Plaintiff's Fourth Request is untimely and therefore objected to. Fourth request reference documents that are also crucial to trial preparation.

Plaintiff has cooperated with Defendant in responding

to 2 (two) sets of interrogatories , requests for admission and a 2 (two) day deposition. Therefore, Plaintiff requests that Motion to Compel be granted.

II. ARGUMENTS AND AUTHORITIES

A. PRODUCTION REQUESTS SEEK RELEVANT AND ADMISSIBLE INFORMATION

The bulk of objections are based upon relevancy. As the Court is aware, that this is a difficult objection upon which to prevail during the discovery phase of an action. The spirit of Rule 26 (a) of the Fed. R. Civ. Proc. is that discovery be self-effectuating, without need to resort to the court, and that its scope be liberal, extending to all matters reasonably calculated to lead to admissible evidence. This standard is well ensconced, and generally known and understood by civil practitioners, *Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385, 91 L Ed. 451 (1947); *Greyhound Lines, Inc. v. Miller*, 402 F. 2d. 134 (8th Cir. 1968); *Carlson Companies Inc. v. Sperry and Hutchinson Co.*, 374 F. Supp. 1080, 1100 (D. Minn. 1974); *Laker Airways Ltd. v. Pan American World Airways*, 103 F.R.D. 22 (D.C. Cir 1984); *National Organization for Women, Inc. (NOW), St. Paul Chapter v. Minnesota Min. & Mfg. Co.*, 73 F.R.D. 467 (D.C. Minn. 1977); *Schlegenhauf v. Holder*, 379 U.S. 104, 114-15, 85 S. Ct 234, 241, 13 L. ED. 2d 152 (1964).

In an employment discrimination action, Plaintiff must be given access in discovery to information that will assist him or her in establishing existence of alleged discrimination, *Runyan v. Sybase, Inc.*, No. 93-0368, 1993 WL 377062 (E.D. Pa. 1993); *Flanagan v. Travelers Insurance Co.*, 111 F.R.D. 42, 45 (W.D.N.Y. 1986).

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In *Rolescreen Company v. Pella Products of St. Louis, Incorporated.*, 145 F.R.D. 92, the court ruled that requests have been reasonably calculated to lead to discovery of admissible evidence which has been interpreted as meaning "any possibility that the information sought be relevant to the subject matter of the action" *citing Morse/Diesel, Inc. v. Fidelity and Deposit Co.*, 122 F.R.D. 447,449 (S.D. N.Y. 1988); *Mallinckrodt Chemical Works v. Goldman, Sachs & Co.*, 58 F.R.D. 348 (S.D. N.Y. 1973)

In *Dykes v. Morris*, 85 F.R.D. 373 (D.C. Ill. 1980) the courts determined that the concept of relevancy is to be broadly construed at the discovery stage of an action and discovery rules are to be afforded liberal treatment as it relates to Fed. R. Civ. Proc. 26 (b)(1), 33 (a), 37 (a)(2), 28 U.S.C.A.

Our system of civil litigation cannot function if parties in violation of court orders, suppress information called for in discovery; mutual knowledge of all relevant facts gathered by both parties is essential to proper litigation, *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (C.A. Ga. 1978)

In *Runyan v. Sybase, Inc. and Clark v. Melton Bank*, N.A., No 92-4823, 1993 WL 170950 (E.D. Pa. 1993) the courts ruled that the scope of employment discrimination actions must go beyond specifics to Plaintiffs claim.

In Request for Prod. No. 32, Plaintiff requested statistical data relative to racial make-up of Defendants employees to which Defendants objected. However, the courts ruled in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 804-05, 93 S. Ct. 1817, 1825; 26, 36 L. Ed. 2d 668 (1975); *Hollander*

v. American Cyanamid Co., 895 F. 2d 80, 84 (2d Cir 1990) that for purposes of discovery in employment discrimination actions, statistical data is relevant to establishing employees pattern of conduct and may facilitate determination as to whether employer has discriminated against particular individual as well as entire class.

In *Kramer v. Boeing Company.*, 126 F.R.D. 690 (D. Minn., 1989) the court ruled that one objecting to discovery on the grounds of relevancy carries the burden to sustain the objection, *citing, Dellums v. Powell*, 642 F. 2d. 1351, 1364 (D.C. Cir. 1980);*Gulf Oil Corp. v. Schlesinger*, 475 F. 913, 916–17 (E.D. Pa. 1979); *Wallace v. General Electric Co.*, 1988 W.L. 31069 (E.D. Pa. 1988); *Martin v. Lamb*, 122 F.R.D. 143, 147 (W.D. N.Y. 1988); *Robinson v. McGovern*, 83 F.R.D. 79, 85 (E.D. Pa. 1979); *In re Folding Carton Antitrust Litigation*, 83 F.R.D. 251, 254 (N.D. Ill. 1978)

Defendant also objects to various requests for production basing objections on inadmissibility. As the Court knows, Rule 26(b) clearly states that inadmissibility is no grounds for objection to discovery, *Oppeheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 98 S. Ct. 2380, 57 L. Ed. 2d. 253 (1978); *Culligan v. Yamaha Motor Corp.*, U.S.A., 110 F.R.D. 122 (S.D. N.Y. 1986).

Defendant' objections of irrelevant and inadmissibility are without merit and Defendant should be compelled to produce documents relative to document requests.

B. CONFIDENTIAL AND PROPRIETARY INFORMATION DISCOVERABLE

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Defendant objects to request for production regarding personnel files and Sears examination report results of employees Defendant who participated in discriminatory action against Plaintiff, citing confidentiality and proprietary information as basis for objections. These file are discoverable.

Personnel file of employees supervisor, who also signed Plaintiffs performance review was discoverable by document request in age and sex discrimination action, as information in personnel file might be relevant and was reasonably calculated to lead to discovery and admissible evidence in *Lyoch v. Anheuser-Bush Companies,* 164 F.R.D. 62 74 Fair Empl .Prac. Cas. (BNA) 691, 69 Empl. Prac. Dec. P 44, 518 (E.D. Mo. 1995).

In *Kramer v. Boeing Company,* 126 F.R.D. 690 (D. Minn., 1989) the courts stated that in product liability action against airplane manufacturers, manufacturer was not entitled to refuse discovery as to certain documents on the basis that documents were confidential but, rather, proper method to protect confidentiality was through protective order, *Lyoch v. Anheuser-Bush Companies,* 164 F.R.D. 62.

However, Defendant has not requested a protective order regarding requests for production as it relates to their objections on the grounds of confidential and or proprietary information. On the contrary, Defendant submitted blanket evidentiary exclusions which can be especially damaging, *Estes v. Dick Smith Ford, Inc.,* 856 F. 2d. 1097, 57 USLW 2195, 47 Fair Empl. Prac. Cas. (BNA) 1472, 47 Empl. Prac. Dec. P 38, 323, 26 Fed. R. Evid. Serv. 943 (8th Cir. (Mo.), 1988.

In the discovery process, individuals are often forced

by the courts to disclose the kind of personal information deserving privacy protection under these decisions. An individuals constitutional privacy interests can thus be implicated by the discovery process to the same extent that it can be indicated by other disclosure requirements, *United States v. Hubbard*, 650 F. 2d. 293 (D.C. Cir. 1980).

Ordinarily, information which is of a confidential or proprietary nature is not, for that reason alone, outside the parameters of civil discovery, *Deitchman v. E. R. Squibb and Sons, Inc.*, 740 F. 2d. 556 (7th Cir. 1984); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, 101 F.R.D. 34 (C. D. Cal. 1984); *Gantron Cooperation v. H. C. Johnson Agencies, Inc.*, 79 F.R.D. 415, 418 (E. D. Wisc. 1978).

In *Johnson Foils, Inc. v. Hyck Corp.*, 61 F.R.D. 405 (N. D. N. Y. 1973) the courts ruled that it should be a rare case in which even highly sensitive business confidences, relevant to a civil law suit, should be entirely unavailable through discovery.

Plaintiff is clearly entitled to requests for production as it relates to Defendants objections to confidential and proprietary information. Defendant's objections are without merit and should be compelled to produce relevant document requests.

C. RULE 26 PROVIDES FOR BROAD DISCOVERY

While trial court is vested with reasonable discretion in determining whether discovery is to be allowed, discovery rule should be given a broad, liberal interpretation, *Edgar v. Finley*, 312 F. 2d. 533 (8th Cir. (Mo.)(1963).

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Under Rule 26(b)(1), " parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action." As a general matter, relevance or discovery purposes is broadly construed and " information sought need not be admissible at the trial if information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The Supreme Court ruled in *Hickman v. Taylor,* 329 U.S. 495, 507 (1947) that it is no longer open to debate that the discovery rules should be given a broad liberal interpretation. No longer can the time-honored cry of fishing expedition serve to preclude a party from inquiring into the facts underlying his opponents case. In *Madden v. Turner Broadcasting Systems, Inc.,* 1998 WL 458188, at *2 (3d. Cir 1998) and *Katz v. Batavia Marine & Sporting Supplies, Inc.* 984 F. 2d 422, 424 (Fed. Cir. 1993) the courts ruled that it is the premise of modern litigation that the Federal Rules contemplate liberal discovery, in the interest of just and complete resolution of disputes.

In Title VII cases, broad discovery rules are applicable to pre-certification discovery, *National Organization for Women v. Sperry Rand,* 88 F.R.D. 272, 277 (D. Conn. 1980). *Burns v. Thiokol Chemical Corp.* [6 EPD P 8737; 483 *F. 2d* 300, 305 (5th Cir. 1973) and *Milner v. National School of Health Technology,* 73 F.R.D. 628, 632 (E.D. Pa 1972) state that rules of discovery are to be liberally interpreted and that Title VII cases scope of discovery is particularly broad.

The Court of Appeals for the Eighth Circuit has stated that Title VII "is to be accorded a liberal construction in order to carry out the purpose of Congress to eliminate the

inconvenience, unfairness and humiliation of racial discrimination", *Parham v. Southwestern Bell.*, [3 EPD P 8021; 433 F. 2d. 421, 425 (8th Cir. 1970).

D. ADMISSIBILITY OF ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT

Patterns and practices of discrimination is claim filed by Plaintiff against Defendant in this litigation. Defendant objects to requests for production no.(s) 26, 27 and 31 basing their objections upon attorney-client and attorney work product privilege. Information within the documents would support Plaintiffs claim of pattern and practices for discrimination.

In *Chaffin v. Rheem Mfg. Co.*, 904 F. 2d 1269, 1271 (8th Cir. 1990) the court ruled that when a complainant challenges an on going pattern of discrimination rather than on isolated instance, the alleged violation may be deemed "continuing".

A majority of the documents in requests no.(s) 26 and 31 are now apart of public record. In *Arkansas National Bank v. Cleburne County Bank*, 525 S.W. 2d 82, 84-85 (Ark. 1975) the court concluded that an attorney may be required to produce papers belonging to his client where the knowledge to their existence is accessible to others or the public, or if the client may be compelled to produce them.

In Defendant's opposition, it is not known whether the requested documents came to counsel since the beginning of litigation in this case or whether counsel has possession of documents at all. *Citing, Arkansas National Bank v. Cleburne County Bank*, the court ruled that "the mere fact that the

documents or knowledge of the documents came to the attorney while acting for the client is not sufficient to invoke the attorney client privilege".

Defendant does not state the status of litigation as it relates to the requested documents. The work product rule does not come into play merely because there is a remote prospect of future litigation citing Fed. R. Civ. P 26(b)(3), 28 U.S.C.A.

Ordinary work product immunity is a qualified one, that is capable of being overcome by a proper showing of justification on the part of the person seeking discovery, *Peterson v. Douglas County Bank and Trust Co.*, 967 F.2d 1186, 1189 (8th Cir. 1992).

In *Resolution Trust Corp. v. Dabney*, 73 F. 3d 262, 266 (10th Cir. 1995) the court concluded that "because the work product doctrine is intended only to guard against the divulging of attorneys strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within the work product". Plaintiff may not rely on Rule 26(b)(3) or claims of work product as a basis for refusing to respond to discovery requests seeking the disclosure of non-privileged facts, *Phillips Electronics North America Corp., v. Universal Electronics, Inc.* 892 F. Supp. 108, 110 (D. Del. 1995).

The Supreme Court ruled in *Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385 that "where relevant an non-privileged facts remain hidden in an attorneys files and where production of those facts is essential to the preparation of ones case, discovery may be properly had. Such written statements

and documents might, under certain circumstances be admissible in evidence or give clues to the existence or location of relevant facts".

Defendant's objections based upon attorney-client and attorney work product are without merit. Defendant should be compelled to produce relative documents.

E. REQUEST FOR A 15 DAY CONTINUANCE FOR DISCOVERY

Plaintiff has been "hamstrung" in his ability to examine discoverable information and data on account of improperly imposed objections by Defendant as it relates to Plaintiffs Joint Third Request for Production of Documents to Defendant. In addition, Defendant has paid only very loose attention to its obligation to produce full, informative and truthful responses to the discovery requests of Plaintiff. This approach has detracted substantially from the orderly progression of this litigation and contrary to the spirit of both rules and precedent governing the pretrial phase of litigation.

Defendant's delays in improperly responding to Plaintiffs Third Joint Request for Production has created a backlog for Plaintiffs Fourth Request for Production of documents. Defendant received Plaintiffs Fourth Request on August 30, 2000 but stated untimeliness as their only objection to respond in their September 5, 2000 letter to Plaintiff. The discovery cut-off date is September 14, 2000. However, Defendant had 15 days to respond to Plaintiffs Fourth Request but has refused to do so. A majority of the requests for production relate to discovery that Defendant has accumulated during the course of the past 8 (eight) months,

would not be burdensome and easily accessible.

Defendant should ordered to answer both Third Joint Requests for Production and Fourth Request for Production of Documents to Defendant by October 1, 2000. The answers to the discovery are crucial to Plaintiff's preparation for trial.

III. CONCLUSION

WHEREFORE, Plaintiff Raymon Bledsoe Sr. requests that Motion to Compel be granted and for all other proper relief.

s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, Arkansas 72301
(870)732-0269
Pro Se

CERTIFICATE OF SERVICE

I, Raymon Bledsoe Sr., certify that I mailed a copy of the foregoing Motion to Compel to Nicole Sargent, 16010 Barkers Point Lane, Suite 500, Houston, Texas 77079 on this 11th day of September, 2000.

s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.

CERTIFIED MAIL #7099 3400 0004 9590 2667

APPENDIX O – BRIEF IN OPPOSITION TO DEFENDANTS MOTION FOR FINAL SUMMARY JUDGEMENT DATED AND FILED ON SEPTEMBER 29, 2000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

RAYMON BLEDSOE SR., Plaintiff

v. Civil Action No. J-C-99-220

NUCOR YAMATO STEEL CO. Defendant

BRIEF IN OPPOSITION TO DEFENDANTS MOTION FOR FINAL SUMMARY JUDGEMENT

Throughout this litigation Defendant, Nucor Yamato Steel Company has maintained a state of denial as it relates to its discriminatory practices against Plaintiff, Raymon Bledsoe Sr. Defendant has tried to twist and even disregard the significance of complaints expressed by Plaintiff in certified letters mailed to Defendant prior to termination, the last of which requested the exercise of the final step of the Company Complaint Procedure of Defendant. Defendant violated its own company policy by terminating Plaintiff without allowing him to exercise that right.

Defendant also denies the significance of psychological evaluations in 1995 and 1998 of Plaintiff by Dr. Sears, company psychologist, which document the fact Plaintiff expressed concerns regarding employment practices of Defendant.

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Defendant would like for this Court to overlook its actions for discrimination as it relates to Title VII of the Civil Rights Act of 1964 and pretend that it never occurred. However, this is a matter of law where relevant facts speak to the issues of this case therefore Defendants Motion for Final Summary Judgement should be denied.

I.
FACTUAL BACKGROUND

Defendant has verbally painted an illustrious portrait of the "most efficient steel mill in the world". Upon Plaintiff's employment with Defendant in June, 1992, Nucor Yamato Steel Company was not the 2 million plus ton operation that it was at Plaintiff's termination on June of 1998. Its annual production rate was closer to 1 million plus tons per year.

Much has been said to discredit Plaintiff's character and contributions during his six year of employment with Defendant. However, the facts indicate that Plaintiff brought a lot to the table as it relates to work experience and education upon employment with Defendant.

Prior to employment with Defendant, Plaintiff had obtained an extensive work history as it relates to production related facilities and construction. Plaintiff owned and operated his own road construction company with an average of 5 immediate employees and as many as 35 subcontractors as a contractor for the Arkansas Highway and Transportation Department. [1]

Other management experience includes customer service representative for a medical orthopedic company

where Plaintiff developed a complete personnel policy. The same owners of KMI changed the name to Onyx where Plaintiff was rehired as assistant plant manager.[2]

During the deposition, counsel for Defendant asked Plaintiff if he was "proud of his education"? Being the first child in his family to graduate from a major college, [3] the answer was yes. With a degree in education, Plaintiff has taught within the public school system as well as adult education for at local college. Plaintiff also has extensive vocational technical training.

During those 1 million ton plus years, Plaintiff met the challenge on the furnaces in setting two records for the 12 hour period. The first record was set as Plaintiff worked with a different first helper and melting supervisor. The second record was with first helper Jamie Cook and melting supervisor Donnie Crum. While on the furnaces, Plaintiff designed a work product that could have saved Defendant as estimated $200, 000.00 per year.

After lateral transfer to refractory, Plaintiff volunteered his previous experience as a quality control manager to become an internal auditor for Defendant's quality control program on some of his days off from work. The long and short of it is that Defendant prospered greatly form Plaintiff's 6 years of employment.

After complaints regarding what Plaintiff perceived as racial harassment. Plaintiff requested an opportunity to exercise the final step of Defendant's complaint procedure when Defendant terminated his employment. Summary Judgement should be denied.

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I
ARGUMENTS AND AUTHORITIES

A. Summary Judgement Request of Nucor Yamato Steel Should Be Dismissed

Defendant's request for summary judgement is this cause should be dismissed. In *Windsor v. Bethesda General Hospital,* 523 F. 2d 891, the Court of Appeals dismissed and vacated employers motion to dismiss stating "in civil rights actions, pleadings are to be liberally construed citing *Coby v. Union Electric,* 518 F. 2d. 978, 979 (8th Cir. 1975); *Cruz v. Cardwell,* 486 F. 2d. 550, 551-552 (8th Cir. 1973); *Escalera v. New York City Housing Authority,* 425 F. 2d 853, 857 (2nd Cir.) cert. denied 400 U.S. 853, 91 S. Ct. 54, 27 L. Ed. 2d 91 (1970); *Holmes v. New York City Housing Authority,* 398 F. 2d 262, 265 (2nd Cir. 1968); *Barnes v. Merritt,* 376 F. 2d 8, 11 (5th Cir. 1967).
Windsor also states that "only when the plaintiff could not state of facts which could entitle him to relief is a district court warranted in granting a motion to dismiss" citing *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S. Ct. 99 2L. Ed. 2d 80 (1957); *Lewis v. Chrysler Motors Corp.,* 456 F. 2d 605, 607 (8th Cir. 1972); *Springfield Television, Inc., v. City of Springfield,* 428 F. 2d 1375, 1381 (8th Cir. 1970); *Great Atlantic and Pacific Tea Co. v. Amalgamated Meatcutters and Butcher Workmen, Local No. 88,* 410 F. 2d 650, 652 (8th Cir. 1969).

The U. S. Court of Appeals for the Eight Circuit in *Robert Johnson Grain Co. v. Chemical Interchange Company,* 541 F. 2d 207 citing *Windsor* noted that summary judgement is an extreme remedy, and one which is not to be granted unless the movant has established his right to a judgement with such clarity as to leave no room for controversy and that the other

party is not entitled to recover under any discernible circumstances. In passing upon a motion for summary judgement the Court is required to view the facts in the light most favorable to the party opposing the motion and give the the party the benefit of reasonable inferences to be drawn form underlying facts. *Adickes v. U. S. H. Kress Co.* 398 U. S. 144, 153-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970), *United States v. Diebold, Inc.*, 369 U. S. 654, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962); *Percival v. General Motors Corp.*, 539 F. 2d 1126 (8th Cir. No. 75-1879 July 21, 1976).

In *Green v. Servicemaster Company*, 66 F. Supp. 2d 1003 (8th Cir. 1999) the court stated that because this is an employment discrimination case, it is well remembered that the Eighth Circuit Court of Appeals has cautioned that "summary judgement should seldom be used in employment-discrimination cases, *Crawford v. Runyon*, 37 F. 3d 1338, 1341 (8th Cir. 1994) citing *Johnson v. Minnesota Historical Soc'y*, 931 F. 2d 1239, 1244 (8th Cir. 1991); *Hilebrand v. M-Tron Indus.*, 827 F. 2d 363, 364 (8th Cir. 1987) cert. denied 488 U. S. 1004, 109 S. Ct. 782, 102 L. Ed. 2d 774 (1989); See also *Snow v. Ridgeview Medical Ctr.*, 128 F. 3d 1201, 1205 (8th Cir. 1997) citing *Crawford; Helfter v. United Parcel Serv. Inc.*, 115 F. 3d 613, 615 (8th Cir 1997) (quoting Crawford); *Chock v. Northwest Airlines, Inc.*, 113 F. 3d 861, 862 (8th Cir. 1997). We must keep in mind that our Court has previously cautioned, that summary judgement should be used sparingly in employment discrimination cases, citing *Crawford); Smith v. St. Louis University*, 109 F. 3d 1261, 1264 (8th Cir. 1997) (quoting *Crawford*) *Hardin v. Hussmann Corp.*, 45 F. 3d 262 (8th Cir. 1995) ("Summary judgement should be used sparingly in employment discrimination cases", citing *Haglof v. Northwest Rehabilitation, Inc.* 910 F. 2d. 492, 495 (8th Cir. 1990); *Hillebrand,*

827 F. 2d at364) .

The Court, in *Green*, 66 F Supp. 2d 1003, concluded that summary judgement is appropriate in employment discrimination cases only in "those rare instances where there is no dispute of fact and where there exists only one conclusion", *Johnson*, 931 F. 2d at 1244; See also *Webb V. St Louis Post-Dispatch*, 51 F. 3d 147, 148 (8th Cir. 1995) (quoting *Johnson*, 931 F. 2d at 1244); *Crawford*, 37 f. 3d at 1341 quoting *Johnson*, 931 F. 2d at 1244. "To put it another way, because discrimination cases often depend on inferences rather than a direct evidence, summary judgement should not be granted unless the evidence could not support any reasonable inference for nonmovant". Evidence will support reasonable inference therefore summary judgement request of Defendant should be dismissed.

In applying the standards as outlined in Rule 56(a)-(c), the trial judges function at the summary judgement stage of the proceedings is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial, *Quick v. Donaldson Co.*, 90 F. 3d 1372, 1376-77 (8th Cir. 1996); *Johnson v. Evron Corp.*, 906 F. 2d 1234, 1237 (8th Cir. 1990). Summary Judgement should not be granted.

B. Plaintiff's Title VII Claims of Discrimination and Retaliation Are Not Barred By the Statute of Limitations Due to Administrative Delays of the E.E.O.C.

Plaintiff fulfilled his responsibilities in corresponding and providing the EEOC with information relevant to

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Plaintiff's claims of discrimination by Defendant. There were delays in the administrative process and evidence will show that the administrative actions of the EEOC are not confined to the 180 days limitation ascribed in 706(f)(1) of Title VII, 42 U.S.C. s2000e-5(f) and that such delays were out of Plaintiff's hands of control.

According to 706(f)(1) of Title VII, an administrative charge must be filed with the EEOC within 180 days of the alleged discriminatory incident. In order to be valid, Title VII requires that "charges shall be in writing under oath of affirmation and shall contain such information and be in such form as the EEOC requires." 42 U.S.C. 2000-5(b). Once the charge is filed, the EEOC has the responsibility of investigating the allegations of the charging party. If the Commission (EEOC) determines that an allegation warrants their intervention they will proceed with conciliation measures with the employer or represent the charging parry in suit against respondent. However, the Commission might determine that there is insufficient evidence that would warrant the intervention of the EEOC and at charging parties request issue a Charge of Discrimination to respondent pursuant to Notice of Right to Sue Letter to charging party.

A brief time line of events shows that Plaintiff corresponded with the EEOC on several occasions prior to the propose December 29, 1998 of Defendant.

Date	**Event**
July 2, 1998	Plaintiff is terminated by Defendant Nucor Yamato Steel Co.[4]

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August 6, 1998	Plaintiff contacts the EEOC via telephone. The Little Rock Office of the EEOC sends charge information form to Plaintiff with notice title "You May File A Charge".[5]
August 24, 1998	Plaintiff completes the charge information form and returns it to the Little Rock EEOC Office.
September 8, 1998	The Memphis Office sends Bledsoe indicating that they had received Plaintiffs information regarding a matter with **Piggy Wiggly** not Defendant Nucor Yamato Steel. The letter states that they wanted to discuss the matter in more detail.[6]
September 15, 1998	Plaintiff speaks to Christine Wilson of the Memphis Office via telephone for approximately 10 minutes when Ms. Wilson determined that based upon the information provided that the EEOC would not represent Plaintiff and any legal proceedings against respondent and the 180 statute of limitations.
October 27, 1998	Plaintiff sends letter to Little Rock Office of the EEOC outlining events to that date. Plaintiff expresses dissatisfaction with interview with Ms. Wilson of the Memphis Office. Plaintiff

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also states that *"Since my conversation with Ms. Wilson, I have not received any documentation from your office or her Memphis Office regarding your findings and or my rights to seek relief with an attorney of my hiring and the time frame in which I have to litigate this case. It is my hopes that your office would review the information submitted to you and render a decision."* [7]

December 29, 1998	Expiration of 180 days to file charge.
January 29, 1999	Plaintiff sends letter to Little Rock EEOC requesting information referencing acceptance or denial of claims again stressing the element of time to litigate the action.[8]
February 5, 1999	EEOC finally responds to Plaintiff's request by submitting Form 5, Charge of Discrimination. **Charge form delayed due to mailing of letter to Blythville instead of Plaintiffs West Memphis address.**[9]
March 4, 1999	Plaintiff sends letter to Little Rock EEOC Office referencing the delay to the wrong address.[10]
March 8, 1999	Plaintiff files charge of Discrimination.[11]

It is clear in the language of the October 27, 1998 letter

that Plaintiff is requesting EEOC finding and or his rights to seek relief with an attorney. In essence, the EEOC is asked to render a decision whether or not it will represent Plaintiff as a result of findings or granting of Charge of Discrimination and Right to Sue Letter so that Plaintiff could litigate the matter privately. This letter was written approx. 115 days after termination of Plaintiff which is well within the 180 day statute to file a charge. However, the EEOC did not respond to Plaintiff regarding his requests.

It is also clear that the EEOC understood the essence of the October 27th letter in that a copy of the October 27th letter was included with the letter to the Little Rock Office dated January 29, 1999 Both letters requested the same documentation. This request prompted a response from the EEOC which led to the March 8, 1999 filing of the charge.

According to calculations of Plaintiff, if the Little Rock Office of the EEOC had responded to the October 27th letter within the same time frame of 40 days as it relates to the January 29th letter, the Charge of Discrimination would have been filed on or about December 7th which would have been well in advance of the December 29th expiration period.

It is clear that administrative delays occurred prior to the March 8, 1999 filing of Charge of Discrimination filed against Defendant and Plaintiff cannot and should not be expected to represent the EEOC as it relates to reasons and or justification of delays. However, Plaintiff can lend some legal support to Congresses intent for the establishment of the 180 statute of limitations.

In *Hazel v. McDonnell Douglas Corp.*, 517 F. 2d 1301 (8th

Cir. 1975) addresses the issue of promptness of the EEOC in that it states that the use of this language as promptly as possible and, so far as practicable demonstrates that Congress did not set specific administrative deadlines. Given the Congressional emphasis on conciliation, "we cannot conclude that Congress intended a 180 day cut off period for Commission enforcement actions when Congress explicitly noted that determinations on reasonable cause alone might take more than 120 days. We believe that the language of the statute and its legislative history support the conclusion that administrative enforcement of Title VII does not cease at the end of 180 days and thus, the 180 day provision does not serve as a deadline for the Commission to issue any notice to the complaining party".

All four Court of Appeals have examined and adhere to *Hazel* in their conclusion that 706(f)(1) is not a time bar to EEOC enforcement. *See Equal Employment Opportunity Commission v. E. I. duPont de Nemours and Co.*, 516 F. 2d 1297 at 1298 (3rd Cir.1975); *Equal Employment Opportunity Commission v. Kimberly-Clark Corp.*, 511 F. 2d 1352, 1356-1357 (6th Cir. 1975); *Equal Employment Opportunity Commission v. Louisville & Nashville R. Co.*, 505 F. 2d 610, 612 (5th Cir. 1974); *Equal Employment Opportunity Commission v. Cleveland Mills Co.*, 502 F. 2d 153, 159 (4th Cir. 1974).

In *Equal Employment Opportunity Commission v. Rexall Drug Company et al.* 1974 WL 320 (8th Cir. 1974), the Courts ruled that the purpose of the 180 day period is merely "to define the time a private party must defer to the Commissions attempts to settle the dispute through conciliation ". Since March of 1972 the EEOC has been allowed to bring civil suits where the investigation of charges filed with the Commission

leads it to believe that discrimination practices have been committed. Public Law 92-261, 86 Stat. 103 (March 24, 1972) Congress realized, however that the Commissions workload might in some instances result in an extensive delay between filing of charges with the EEOC and institution of civil proceedings, and determined that *after the 180 day period* the party who filed charges could bring a private action in order to "escape from administrative quagmire which occasionally surrounds a case caught in an overloaded administrative process".

In the October 27th letter, Plaintiff expressed his dissatisfaction with the interview with Ms. Wilson of the Memphis Office. In the last sentence of the letter, Plaintiff asks the Little Rock Office of the EEOC *"that your office would review the information submitted to you and render a decision"*. It was Plaintiff's impression that during the lapse between the October 27th letter and the January 29th letter that the Little Rock Office had reconsidered the information and was therefore conducting an investigation. However, even if the Little Rock Office had decided not to reconsider Plaintiff's complaint, it was under the administrative duty to respond to Plaintiff's October 27th letter.

While the Little Rock Office of the EEOC did not respond promptly and properly to Plaintiffs requests in his October 27, 1998 letter, according to the wording of *EEOC v. Rexall,* Plaintiff was well within his rights in his second request in his letter to the Little Rock Office dated January 29, 1999 to file after the 180 day period.

It is clear that the Little Rock Office of the EEOC maintained a file regarding Plaintiff's case within that office.

It is also clear that in no communications with the Little Rock Office did it indicate that Plaintiff had missed the 180 day filing date. Instead the Little Rock Office responded to the January 29, 1999 request by issuing a Charge of Discrimination on March 8, 1999.

As this Court can clearly see, the EEOC has been afforded much latitude by Congress and the Courts of Appeals in its administrative actions. It is also clear that Plaintiff exhausted all administrative means prior to and after the 180 day filing period to bring this case to trial.

Plaintiff exercised diligence and therefore cannot be held responsible for the administrative delays of the EEOC. Delays which could not be controlled by Plaintiff.

Plaintiff relies on the theory of Equitable Tolling which is appropriate only when the circumstances that cause a Plaintiff to miss a filing deadline are out of his hands. *See Zipps v. Transworld Airlines, Inc.* 455 U. S. 385, 393, 102 S. Ct. 1127, 1132-33, 71 L. Ed. 2d 234 (8th Cir. 1982) and *Hill v. John Chezik Imports,* 829 2d. 112, 1124 (8th Cir. 1989) Equitable tolling arises upon some positive misconduct by the party against to whom it is asserted, *DeBrunner v. Midway Equpt. Co.,* 803, F. 2d 950, 952 (8th Cir. 1986). *Melendez v. Singer-Fiden,* 529 F. 2d 321, 323-324 (10th Cir. 1976), equitable tolling is warranted where matters, beyond plaintiff's control are at work such as administrative delay or dereliction.

The timely filing of a charge with the EEOC is subject to waiver, estoppel and equitable tolling, *Walker v. St. Anthonys Medical Center,* 881, F. 2d 554, 556-557 (8th Cir. 1989).

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Plaintiff's filing period should be tolled and logic dictates that he maintain all claims referred to Plaintiff's First Amended Complaint and Plaintiff's Second Amended Complaint which is pending before this Court. Summary Judgement should not be granted.

B. Evidence That Plaintiff was Subject to Racial Harassment While Employed at Nucor Yamato Steel Company.

To prove the Plaintiff was subjected to a hostile work environment in violation of Title VII, Plaintiff must prove (1) he belongs to a protected group, (2) he was subject to unwelcome harassment, (3) the harassment was based on race, (4) the harassment affected a term, condition of privilege of employment and (5) employer liability-meaning that employer knew or should have known of harassment and failed to take proper remedial action. 42 U. S. C. A. 2000e.

Plaintiff was racially harassed by supervisors Donnie Crum while he worked on the furnaces and by Glenn Brown after Plaintiff's lateral move from the furnaces of Nucor Yamato Steel to the refractory department. Defendants introduced a disciplinary write up by Donnie Crum labeled as Defendants Exhibit "B", an incident which occurred on July 19, 1994.

On or about July 26, 1992,[13] Plaintiff was promoted from truck driver to utility man on the furnaces. During the interview for the position, John Bell then melt shop manager, referred to Plaintiff's reason for consideration was due to fulfillment of quota.[14] Plaintiff was promoted to second helper on or about September 5, 1992.[15] Plaintiff was

assigned to furnace no. 1 where Jamie Cook was first helper. Plaintiff was trained and working in position of second helper for a period of approx. 22 months, almost 2 years without any incident and or documentation of work performance.

Employment records of Donnie Crum which Defendant refuses to produce per production requests of Plaintiff will show that Donnie Crum was promoted from first helper to melter shortly after Plaintiff was promoted to utility man.

During the period that surrounds the July 26th incident, Nucor Yamato Steel had established a goal of 2 million tons per year production and production records for that period will demonstrate that C crew, the furnace crew which Donnie Crum supervised, was not making production. It was even more telling that Donnie Crum was inadequate in his supervisory role when during this period John Bell-melt shop manager, came to the furnaces and reprimanded Donnie Crum stating that he (Donnie Crum) was not a 2 million ton melter.

In a conversation with Calvin Brandenburg, first helper for furnace # 2 for C crew, Plaintiff and Brandenburg who is white were discussing Donnie Crum when he warned Plaintiff of the fact that Crum was a racist.[16] Plaintiffs' feelings that Crum was a racist was supported even more when he heard Crum refer to a former black employee as "that boy".

During the incident, no. 1 furnace was experiencing production difficulties. Plaintiff was on the back of the furnace trying to turn it around when a frustrated Jamie

Cook, and two other co-workers came to the back of the furnace and began to blame Plaintiff for problems which were out of Plaintiff's control. Jamie Cook left the furnace platform and was on the furnace deck (a lower level) when Plaintiff threw buckets onto furnace platform after Plaintiff had completed task of sanding tap hole. Jamie Cook ran from furnace deck and up to the furnace platform making suggestions of wanting to fight Plaintiff when Plaintiff out of feelings of frustration and racial harassment made remark to Jamie Cook to get off the sump (back of furnace).

Crum also required that Plaintiff work on furnace deck for excessive period of time where he was exposed radiant heat in excess of 2800 degrees Fahrenheit.[17]

Personal notes record by Plaintiff indicate that on May 11, 1996 that the tap hole on furnace wash through 3 times and Donnie Crum was on the not paying attention to what was going on during one of the wash throughs.[18] Plaintiff called for maintenance which was Crums responsibility.

On May12, 1996, Jimmy Adams a white second helper for furnace no. 2 was insubordinate when Crum told him to leave Vulcan Gun on deck and he removed it anyway and further violated a safety issue in that he was working without a heat shield.[19] Donnie Crum did not write him up.

On May 12, 1996, Plaintiff talked to Cook about Crum turning furnace around slowly.[20] Crum also had a history of sleeping on the job and one occasion, a first helper from another crew threw an object breaking the window in the

tapping pulpit where Donnie Crum worked in order to awaken him.

On page 3 of Defendants brief in motion for summary judgement, Defendant allude to warning related to "serious arguments and physical force" as it relates to July 17, 1996 incident where Plaintiff was suspended for 1 day.[21] Donnie Crums inadequacies and racial bias surface again.

Personal notes recorded by Plaintiff on July 17, 1996[22] state that Dennis Foster who is white and was utility man for no. 1 furnace instructed the crane operator to remove a broken electrode from the furnace before Plaintiff could safely climb out of the way endangering the life and safety of Plaintiff. Immediately after the incident occurred, Plaintiff talked to first helper Jamie Cook and then talked to supervisor Crum about Fosters actions. Crum delegated his responsibility as supervisor in telling Plaintiff to talk to Foster. Under Crums instruction regarding the safety violation, Plaintiff went back to work area and talked to Foster. During the conversation Foster called Plaintiff "an ignorant mother-fucker. Provoked by Foster and nervous from the safety violation, Plaintiff pushed Foster. Crum then called for a meeting after which included Foster but he did attend. Foster was insubordinate. To add further insult to injury Plaintiff was suspended for 1 day and Foster was not suspended. The actions of Donnie Crum were perceived by Plaintiff as racial harassment and discriminatory in nature. Defendant has also refused the production of personnel files of Foster[23]

The actions Jimmy Adams and Dennis Foster support *Mitchel v. Toledo Hosp.*, 946 F. 2d 577, 583 (6th Cir. 1992) (explaining

that comparable individuals must (1) have dealt with the same supervisor; (2) have been subject to the same standards; and (3) have engaged in the same conduct without such differentiating or mitigating circumstances which would distinguish their conduct or the employers treatment of them for it).

While on the furnaces, Plaintiff experienced racial harassment from John Beaton-melt shop manager when Plaintiff complained of racial bias in the testing process.[24]

Due to the harassment of Donnie Crum and Defendant's refusal to promote Plaintiff, Plaintiff requested lateral move to refractory after which Donnie Crum was assigned as supervisor for the castor. These concerns were expressed to then plant manager Dan DiMicco. At the castor, Crum continued to not take responsibility as supervisor in inspecting tundish and plates before casting steel in them.[25] When he realized that Plaintiff was responsible for building the tundish he continued to do what he had done for years and that was harass Plaintiff.

Upon Plaintiffs lateral move to refractory, B crew castor supervisor Glenn Wayne Brown told Albert Dyer, Plaintiff's coworker in refractory, that he heard that Plaintiff was lazy. Browns statement to Dyer in essence set the stage for the continuance of the hostile work environment that Plaintiff was trying to leave from the furnaces.

Glenn Wayne Brown continued the harassment in Plaintiff's first week under the disguise of requiring Plaintiff to locate items for the castor that Plaintiff was not familiar with. Plaintiff recognized that Brown was racially harassing

him when he called Brown on the company radio and asked him to meet with Plaintiff after work. Brown agreed.

In the meeting Plaintiff addressed the issue of harassment with Brown. Brown responded not by denying the harassment but by confirming it by stating "when I (Brown) come after you, you will know it".[26] Plaintiff from that point worked in a constant state of fear. On the evening of April 18, 1998, B crew was having its daily shift meeting before the work when Deborah Devalcour-crane operator express safety concerns.[27] Plaintiff agreed with Devalcour concerns and Brown became upset and stated that " he (Brown) was not going to take this shit anymore". Devalcour is a white female. That evening Glenn Wayne Brown began a concerted effort to further racially harass Plaintiff. Prior to that evening, Brown seldom came to Plaintiffs work area but on that evening Brown saw Plaintiff sleeping in a chair in his work station and the next evening Brown saw Plaintiff sleeping again and Plaintiff was written up for both incidents. Plaintiff does not contest the write up although Jess Garner, plaintiffs immediate supervisor, told Plaintiff and at least 3 other refractory employees that is was permitted and even recommended that employees take a "power nap" on night turns. Plaintiff had saw Brown sleeping in his chair on a night turn.[28]

On May 18, 1998 plaintiff talked to plant manager-Dan DiMicco about Browns harassment and DiMicco told Plaintiff not to let Glenn Browns actions affect his (Plaintiff's) work.[29] Plaintiff was not reassured instead Brown further harassed Plaintiff by calling him on the company radio on May 28, 1998[30] and requesting a meeting with him where he raised 5 issues , 4 of which by his own admission were not

relevant.[31]

In *Stafford v. State of Missouri,* 835 F. Supp. 1136 (8th Cir. 1993) the Court states that an employer will be subject to liability under Title VII if (1) the harasser is the employer or one of the employers supervisors who is determined to be agent of the employer or (2) the employer knew or should have known of harassment caused by a co-worker, but failed to take corrective action. Citing *Kauffmen v. Allied Signal, Inc.,* 970 F. 2d 178, 182-183 (6th Cir. 1992); *Sparks v. Pilot Freight Carriers, Inc.,* 830 F. 2d 1554, 1558-1559 (11th Cir. 1987); *Turner v. Barr,* 811 F. Supp. 1,2-3 (D. D. C. 1993) *Cronin v. United Service Stations, Inc.,* 809 F. Supp. 922, 928 (M. D. Ala. 1992)

Defendant knew or should have known through the certified letters from Plaintiff of harassment and failed to take prompt remedial action reasonably calculated to stop the harassment. Citing *Baily v. Runyan,* 167 F. 3d 466, 468 (8th Cir. 1999); *Davis v. Tri State Mack Distribs., Inc.,* 981 F. 2d 340 343 (8th Cir. 1992).

This steady barrage of racial harassment began to affect what one could describe prior to that as a wholesome and productive work and after work relationship of church and even participation in a basketball tournament with coworker Dyer. Mike Gruley contributed to an already hostile work environment by telling coworker Dyer "I don't care if he (Plaintiff) is fucking your wife, you are going to get along with each other".

The Sears Evaluations of 1995 and 1998 are consistent is that company psychologist Dr. Sears states that "he (Plaintiff) has felt aggrieved.[32] *Hocevar v. Purdue Frederick*

Company, 2000 WL 116228 (8th Cir. 2000) cites *Harrris v. Forklift Systems, Inc.,* 510, U. S. 17, 21, 114 S Ct. 367, 126, L. Ed. 2d 295 (1993) (recognizing that Title VII bars discriminating conduct that affects that affects a reasonable persons psychological well being); *Knopp V. Samaritan Health Sys. Inc.,* 13 F. 3d 264, 269 (8th Cir. 1993) (psychological harm is relevant factor in hostile work environment analysis).

In *Cherry v. Menard, Inc.,* 101 F. Supp. 2d. 1160 (8th Cir. 2000) the Court states that "a discriminatory abusive work environment may exist where harassment caused economic injury, affected the employees psychological well being detracted from job performance, discouraged and employee from remaining on a job, or kept the employee from advancing in his or her career. But even conduct that does not affect employees psychological well being, can and often will distract from employees job performance, discourage employee from remaining on the job, or keep them from advancing in their careers, *Smith v. St. Louis University,* 109 F. 3d 1261, 1265, (8th Cir. 1997) quoting *Harris,* 510 U. S. 17, 22, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993);

While the words racial harassment does not appear in certified letter to Defendant, the word harassment does which is Defendant's argument. The Courts question at this point is what would a jury draw from this inference to racial harassment after consideration of other relevant facts.

It is Plaintiff's contention that racial harassment is the inference drawn from melt shop managers hurried suspending and eventual termination of Plaintiff.

The Supreme Court directs that "the objective

severity of harassment should be judged from the perspective of a reasonable person in the plaintiffs position, considering all circumstances". *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U. S. 75, 81, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998) quoting *Herns v. Forklift Sys., Inc.*, 510 U. S. 17, 23, 114 S. Ct. 367, 126 L. Ed. 295 (1993).

It is clear that summary judgement as it relates to harassment should not be granted.

C. Evidence to Support Prima Facie Case to Race Discrimination In Plaintiffs Disciplinary Actions and Termination and Evidence of Pretext.

It is clear from the evidence presented in section B. Evidence That Plaintiff was Subject to Racial Harassment While Employed at Nucor Yamato Steel Company that the disciplinary actions and termination of Plaintiff were discriminatory in nature.

In order to establish a prima facie case of discrimination it must be established that (1) the plaintiff is a member of a protected class (2) an adverse employment action was taken against plaintiff, and (3) circumstances existed that raise an inference of unlawful discrimination. *Johnson v. Legal Services of Ark.*, 813 F. 2d 893, 896 (8th Cir. 1987), citing, *Texas Dept of Community Affairs v. Burdine*, 450 U. S. 248, 253, (1981).

According to Section D, of the EEOC Compliance Manual, 8-II. Elements of a Retaliation Claim titled Adverse Action, Subsection 1. General Types of Adverse Action,[33] Defendant has satisfied 6 of the most obvious types of

adverse actions as it relates to disciplinary actions and termination of Plaintiff. They include; suspension, discharge, threats, reprimands, harassment, and suspending or limiting access to an internal grievance procedure.

A brief time line will clarify many of the irregularities as it relates to arguments presented by Defendants. The time line will also demonstrate steps 2 and 3 in the establishment of prima facie case of discrimination. Defendant has produced one relative to events after termination, however this time line will reference events prior to termination.

Plaintiff transferred to the refractory department in 1996. During the first week Glenn Wayne Browns racial harassment begins. When Plaintiff expressed concerns about the harassment with Brown he did not deny it but confirmed it by making the statement to Plaintiff in the meeting that "when I come after you, you will know it". Browns threat represented an adverse action.

DATE	EVENT
March 3, 1998	Due to the intimidating work environment created by Brown's racial harassment, Plaintiff requested meeting with refractory supervisor-Jess Garner concern the stress that Plaintiff was experiencing. In the meeting Plaintiff requested help in order to cope with the intimidation but Garner offered none.
April 18, 1998	During a daily shift meeting a white female crane operator expressed concerns Brown

about working in the crane during the storm that devastated Manila, Ark. and Plaintiff agreed with her. In response Brown stated "I'm not going to take this shit anymore" and walk out of meeting.[34]

April 18, 1998 — Plaintiff is written-up for sleeping in his chair. Possible adverse action.

April 27, 1998 — Plaintiff requests meeting with Garner, co-worker Dyer and Garner. The meeting was in reference to the difficulties that Dyer and Plaintiff experienced in working with Brown. It was revealed in the meeting by Dyer that Brown had a five year history of harassment.[35]

April 27, 1998 — Plaintiff mailed letter to Garner referencing the meeting and requesting meeting with plant manager DiMicco.[36]

May 4, 1998 — Evaluated by Dr. Sears for what Plaintiff thought was the result of his expression in the possible replacement of supervisor Jess Garner who in conversation days earlier had expressed interest in a job at a proposed facility in Oregon. Plaintiff requested the supervisor-employee with Garner to discuss the results of the test but Garner refused to go over the test with Plaintiff and after making numerous request to Garner prior to termination, Plaintiff did not receive that results until

months after termination. [37]

In the evaluation, Dr. Sears references the fact that "he (Plaintiff) is expending energy nursing grievances".[38] The evaluation is referenced by Mike Gurley on June 29, 1998 when he states that it almost exactly like the 1995 Sears Evaluation.

May 12, 1998 Browns yells over the company radio, which accesses the entire melt shop, to Albert Dyer "come up and see what a cocked nozzle will do for us". Plaintiff expressed the fact that the tundish was not one that Dyer and Plaintiff prepare for the caster but the inference in his yelling was that Dyer and Plaintiff were responsible for it. Brown become unglued and demanded that Plaintiff leave his work station. [39]

At 5:00 that afternoon, Brown called Plaintiff over the radio and asked for meeting after work. Plaintiff agreed initially but after giving thought to the fact that Garner nor Dan DiMicco had not responded to certified letter requesting meeting concerning the intimidation from Brown and considering the anger that Brown had exhibited earlier that day, Plaintiff asked Brown if it meeting was related to the incident related to the nozzle that occurred earlier that day and Browns response was "no". Plaintiff declined the

meeting expressing the fact that there was nothing outside of work that he wanted to talk about.

May 12, 1998 Brown wrote-up Plaintiff for work performance, conduct and insubordination. All of which represent adverse actions-harassment in that Plaintiff did not build the tundish that had the problem, there were no other instances where Plaintffs work performance was at issue that day, Plaintiff left Browns work area at his demand and the meeting that he requested over the radio by his own admission was not in reference to work.[40]

May 13, 1998 Plaintiff written-up by Donnie Crum for placement of the wrong plates in a tundish. Racial harassment and lack of response from plant manager regarding problem with Brown begins to take its toll on Plaintiffs work performance. However, Crum was negligent in not inspecting tundish before they flew into it which was a requirement.[41]

May 18, 1998 DiMicco responds to Plaintiffs April 27th request 22 days later. The Company Complaint Procedure[42] states that 5 day response time from date of written complaint. This represents an adverse action-limiting

access to an internal grievance procedure and violates Step 3 of Defendants company complaint procedure.

May 28, 1998 Brown called Plaintiff on company radio at 5:30 p.m. and requested meeting after work. Reluctantly Plaintiff accepted but requested John McCauly-melter to also be present, McCauley agreed The meeting started with Brown stating that Plaintiff's attitude was bad, that Plaintiff disrespected him on the radio and asked why Plaintiff hated him. None of Browns remarks could be justified. Plaintiff maintained minimum contact with Brown. He proceeded to state 5 issues that he felt Plaintiff should correct.[43] By Browns own admission, only 1 issue was relevant to Plaintiff and it was a minor issue. This represented an adverse action-harassment and reprimand from previous write-up of insubordination.

June 15, 1998 Plaintiff mailed certified letter to Jess Garner regarding the insubordination write-up by Brown and the factors behind the installation reused plates as it related to the write-up by Crum. Plaintiff expressed concerns regarding lingering work issues with Brown.[44]

June 26, 1998 Plaintiff suspended by melt shop manager-Mike Gurley based upon a comment by Albert Dyer to Jess Garner. Plaintiff is reprimanded again for previous write-ups.

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This represent an adverse action.[45]

June 29, 1998 Plaintiff returned to work from suspension. Gurley came out to Plaintiff's work area and talked to Plaintiff. He had in his possession page 3 of Plaintiff's 1995 Sears Evaluation and emphasized areas that he could use to justify his actions. He stated that Plaintiff's 1998 evaluation was "exactly the same almost.[46]

June 29, 1998 Plaintiff mailed Gurley certified letter regarding suspension, issues regarding negligence in the administration of company policy and requested that Plaintiff be allowed to exercise the final step of Defendants complaint procedure as it relates to Step 4.[47]

July 2, 1998 Plaintiff was terminated without having exercised the final step of Defendant's complaint procedure. The represented another adverse action.[48]

One of Defendants claims about Plaintiff is his supposed inability to get along with coworkers. As this Court can clearly see, Plaintiff made every effort possible working within the guidelines of Defendant's company complaint procedure. Adverse actions can be seen throughout the time line provided above. *Anderson v. Methodist Evangelical Hospital,* (1971) WD Ky) 1971 WL 150, 4 BNA. FEP Cas 33, 3 states that "a discharge based upon an inability to get along with others" violated Title VII when supervisors were aware

of racial disharmony and terminated a black employee rather than investigate it.

The circumstances stated in the above time line existed and raise more than an inference of unlawful discrimination. Therefore Defendant's request for summary judgement should be denied.

D. Prima Facie Case of Retaliation

A prima facie case of retaliation has been established by Plaintiff in that he (1) engaged in a statutorily protected activity; (2) the he suffered an abusive employment action; (3) casual connection existed between the adverse employment action and the protected activity. *Eva v. Kansas City, Mo. School Dist.*, 65 F. 3d 98, 100 (8th Cir. 1995) cert. denied 517 U. S. 1104, 116 S. Ct. 1319, 134 L. Ed. 2d 472 (1996) An employer may not discriminate against an employee because the employee "has opposed any practice made unlawful employment practice, 42 U. S. C. A. 2000e-3(a).

Plaintiff was subjected to harassment through a series of retaliation and adverse actions for complaining of unfair promotional practices. Issues regarding the promotion process were raised with plant manager-Dan DiMicco and melt shop manager-John Beaton in 1996.[49] Plaintiff was retaliated against for those complaints in three ways: (1) he was scolded by John Beaton;[50](2) he was suspended one day for allegedly fighting with a co-worker;[51] and Beaton failed to act on Plaintiff's complaint about a plant security guard and Beaton asked him what he did to the guard.[52]These acts were discussed by Plaintiff in his

deposition. Defendants allege that these events are barred by the statute of limitations relying on the theory of the 180 day filing period which should be tolled by this Court.

It is evident and Plaintiff has shown that a reasonable inference of racial harassment can be drawn from harassment described in certified letters to Defendant and events which form the basis of those letters.[53] Those certified letters constitute protected activity under Title VII of Plaintiff as it relates to racial harassment by Glenn Wayne Brown,[54] retaliation for writing the letters by Mike Gurley[55] and the adverse action of Mike Gurley by terminating Plaintiff's employment.[56] In *Reginelli v. Martin Industries, Inc.* 987 F. Supp. 1137 (8th Cir. 1997) the Court ruled that the Title VII prohibition against retaliation, "is not confined to situations in which the parties are engaged in formal proceedings, but rather to extend to forbid discrimination against applicants or employees for attempting to protest or correct allegedly discriminating conditions of employment. *Hern v. R. R. Donnellery & Son Co.*, 460 F. Supp. 546, 548 (N. D. II. 1978) quoting *McDonnel Douglas Corp. v. Green*, 411 U. S. 792, 796, 93 S. Ct. 1817, 1821, 36 L. Ed. 2d 668 (1973). This is consistent with the underlying purpose of Title VII to resolve employment discrimination disputes short of formal litigation where possible. Informal action taken to protest unlawful treatment is surely protected "opposition" activity, so long as it is not so unreasonably disruptive as to lose the protection of Title VII.

Plaintiff reasonably believed that he was reporting racial discrimination when he was retaliated against the write-ups, suspensions and eventual termination of employment with Defendant by Mike Gurley.

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Hargens v. United States Department of Agriculture, 865 F. Supp. 1314 (8th Cir. 1994) states; to establish the activity as protected under Title VII, a plaintiff need not prove the merits of the underlying discrimination complaint, but only that he was acting under a good faith reasonable belief that a violation existed. Citing *Sumner v. United States Postal Service,* 899 F. 2d 203, 209 (2nd Cir 1990); *Wilson v. U T Health Center,* 973 F. 2d 1263, 1267 (5th Cir. 1992) (good faith, reasonable charges of violation protected even if charges ultimately shown to be unfounded .*DeAnda v. St. Joseph Hosp.,* 671 F. 2d 850, 853 n. 2 (5th Cir. 1982) and *Berg v. LaCroose Cooler Co.,* 612 F. 2d 1041, 1045-46 (7th Cir. 1980).

The Eighth Circuit Court of Appeals has used an alternative formulation of the prima facie showing in retaliation cases that specifically requires a showing that the employer had knowledge of the employees protected activity and a showing of temporal proximity of the discharge to the protected activity to establish a casual connection. This formulation requires a showing that (1) the employee engaged in a protected activity (2) the defendant was aware of the plaintiffs engagement in the protected activity (3) the plaintiff was subsequently discharged and (4), that the discharge followed the protected activity so closely in time as to justify an inference of retaliatory motive. Plaintiff has established all of the criteria expressed in this formulation satisfying the final element with the mailing of certified letter dated June 29, 1998 followed by termination of Plaintiff on July 2, 1998. Summary Judgement should not be granted.

E. Prima Facie Case for Tort of Outrage Claim

Plaintiff's claim tort of outrage is not preempted by

the Arkansas Workers Compensation Act. An important aspect of the tort of outrage claim is that of emotional distress. It is clear from other claims stated in this Opposition for Summary Judgement that Plaintiff suffered for a greater portion of his employment with Defendant from racial harassment which resulted in anxiety and stress that should not have been part of his job requirement with Defendant. *Crenshaw v. Georgia Pacific Corp.*, 915 F. Supp. 93 (1995), the Court ruled; factors that bear an determination of whether conduct is extreme and outrageous include: the conduct at issue; the period of time over which the conduct took place; the relation between plaintiff and defendant, and defendants knowledge that plaintiff is peculiarity susceptible to emotional distress be reason of some physical or mental peculiarity.

Psychological evaluations of Plaintiff for the years of 1995 and 1998 demonstrate that Plaintiff felt "aggrieved" as it related his employment with Defendant. The injury to Plaintiff's shoulder is not the only issue but the racial harassment which created a hostile environment where Plaintiff was subjected to radiant heat temperatures well in excess of 2800 degrees Fahrenheit on the furnaces for excessive periods of time by Donnie Crum and temperatures in excess of 1200 degrees Fahrenheit in refractory department as Plaintiff was required to change plates out by Glenn Wayne Brown-castor supervisor.

Exposure to such high degrees of radiant heat has reduced Plaintiff's tolerance to ambient heat which is not only crucial to Plaintiff's health as it relates to heat exhaustion but is also critical to Plaintiff's current occupation which requires outside work. The fact that employer

continues unjustifiable conduct over long periods of time can be important factor weighing in favor of finding that employer conduct toward employee was outrageous, *Smith v. American Greeting,* 804 S. W. 2d 683 (1991). Defendant's suggestion that tort of out rage claim only amounts to a shoulder injury and that it is only a workers comp. claim in totally in error. In *Gourley v. Crossett Public Schools,* 968 S. W. 2d 56 (1998) the Court stated that we have noted several times that an employer who willfully and intentionally injures an employee is not immune from a common-law tort action. *See Hill v. Patterson,* 313 Ark. 322, 855 S. W. 2d 297 (1993); *Thomas v. Valmac Indust., Inc.,* 306 Ark 228, 812 S.W. 2d 673 (1991); citing *Heskett v. Fisher Laundry & Cleaners Co.,* 217 Ark 350, 230 S. W. 2d 28 (1950). Accordingly Summary Judgement should not be granted.

F. Defamation Claim is Not Time Barred and the Remainder are Not Privileged

Defamation claims of Plaintiff's First Amended Complaint and Plaintiff's Second Amended Complaint which is before this Court are not time barred and the remainder are not privileged. Plaintiff's claims of defamation in his First Amended Complaint arise from employee write ups, and supervisor comments. However, claims of defamation in his Second Amended Complaint not only relate to claims of the First Amended Complaint but also to Defendants accusations during Plaintiff's deposition of drug sale, use and arrest not only of Plaintiff but also Plaintiff's children. An exhibit was offered into evidence that Defendant obtained from the Internet.

The truth of the matter is that Defendant has been

reckless with speech to Plaintiff and about Plaintiff during the 6 years of employment to Defendant. For example, shortly after Plaintiff was employed with Defendant, Plaintiff asked Donnie Crum if he would care to meet Plaintiff's wife and family who waited for him in Plaintiff's car in the melt shop parking lot. Crum agreed to meet Plaintiff's family. Plaintiff introduced Crum to family and Crum proceeded to look and Plaintiff's children and suggest that one of them did not look like Plaintiff. Plaintiff was insulted, Plaintiff's wife was insulted and Plaintiff could not began to understand stand the inference that he children may have drawn from Crums remarks.

Another example of Defendant's malice conversation is the conversation that Mike Gurley had with Jess Garner and Albert Dyer where Garner and Dyer were discussing Plaintiff's working relationship with Dyer when Gurley intrudes and states "I don't care if Raymon is fucking your wife, you are going to get along"

Defendant would like for Court to think that these remarks are privileged, time barred and just a mere figure of speech. However, both statements taken in context are malicious, injurious and defamatory and not protected by privilege. Judge J, Hays of the Arkansas Supreme Court ruled in *Dillard Department Stores v. Felton*, 634 S. W. 2d 135 (Ark. 1982) and citing *Arkansas Associated Telephone Company v. Blankenship*, 211 Ark. 645, 201 S. W. 2d 1019, (1947) "we, approved the following language: The protection of the privilege may be lost by the manner of its exercise, although the belief in the truth of the charge exists. The privilege does not protect any unnecessary defamation. In order for a communication to be privileged, the party making it must be

sure to go no farther than his interest or his duties require. Where the party exceeds his privilege and the communication complained of goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of plaintiff, he will not be protected, and the fact that a duty, a common interest, or a confidential relation existed to limited degree is not a defense, even though he acted in good "faith" (At p. 651, 201 S. W. 2d 1019).

It is clear that the above conversations of Crum and Gurley meet the above criteria for denial of privilege by this Court. It appears to be a pattern of Defendants. Pattern and practices of harassment is a claim in both amended complaints. *Jenkins v. Wal-Mart Stores, Inc.*, 910 F. Supp. 1399 (8th Cir. 1995) state that a plaintiff making a claim of discrimination may challenge incidents which happened outside the statutory time limitations of Title VII if the various incidents or acts of discrimination constitute a continuing pattern of discrimination. *Ashley v. Boyle's Famous Corned Beef Co.*, 66 F. 3d 164, 167-68 (8th Cir. 1995) citing *Hukkanen v. Internat'l Union of Operating Eng'rs.*, 3 F. 3d. 281, 285 (8th Cir. 1993); *West v. Philadelpha Elec. Co.*, 45 F. 3d 794, 754 (3d Cir. 1995) A continuing violation can be drawn if a specific incident occurred beyond the 180 day period if incident is part of an on going pattern of discrimination. *Chaffin v. Rheem Mfg. Co.*, 904, F. 2d 1269, 1271 (8th Cir. 1990); *Satz v. ITT Fin Corp.*, 619 F. 2d 738, 743 (8th Cir. 1980); *Smith v. Office of Economic Opportunity*, 538 F. 2d 226, 228-29 (8th Cir. 1976). Therefore the statutory limitations are challenged regarding the defamation claim and summary judgement should not be granted.

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III

CONCLUSION AND REQUEST FOR RELIEF

Plaintiff would remind the Court that essential requests for production have been denied by Defendant. Such requests are not only essential to Plaintiff in order for him to successfully plead this case but said request have been a lost element in Plaintiffs Opposition to Summary Judgement of Defendants. In *Stanback v. Best Diversified Products, Inc.*, 180 F. 3d 903 (8th Cir. 1999) the Court state " although discovery does not have to be completed before Court can grant summary judgement, summary judgement is proper only after nonmovant has had adequate time to engage in discovery. Federal Rules of Civil Procedure 56, 26 U. S. C. A.

WHEREFORE PREMISES CONSIDERED, Raymon Bledsoe Sr., respectfully requests that this Court deny Motion for Final Summary Judgement and grant Plaintiff's claims for violations of Title VII without prejudice as there are genuine issues of material fact warranting a trial before a jury.

CERTIFICATE OF SERVICE

This is to certify that true and correct copies of Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgement were served upon Defendant by certified mail, return receipt requested, on this 29th day of September 2000, as follows:

Appendix O

Nicole Sargent
Alaniz and Schreader
16010 Barkers Point Lane, Suite 500
Houston, Texas 77079

APPENDIX P – NUCOR YAMATO STEEL'S ORIGINAL ANSWER TO RAYMON BLEDSOE'S FIRST AMENDED COMPLAINT.

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

RAYMON BLEDSOE, SR.,	§	
Plaintiff,	§	
vs.	§	CIVIL ACTION NO.
	§	J - C- 99 - 220
NUCOR-YAMATO	§	
STEEL COMPANY	§	
Defendant.	§	

DEFENDANT NUCOR YAMATO STEEL COMPANY'S ORIGINAL ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT

TO: Mr. Raymon Bledsoe, Sr., pro se, 710 Johnson Drive, West Memphis, Arkansas 72301.

Nucor-Yamato Steel Company (hereinafter "Nucor" or "Defendant"), Defendant in the above-entitled and numbered cause, files this Original Answer to Plaintiff's First Amended Complaint and in support of which would show as follows:

II.
AFFIRMATIVE DEFENSES

31. Defendant would affirmatively show that Plaintiff is not entitled to any relief for his claims as the EEOC failed to comply with its statutory duty to investigate and attempt to

resolve the allegations in accordance with Title VII of the Civil Rights Act of 1964, as amended.

Respectfully submitted,
By: s/ [illegible]

John K. Linker
State Bar No. 00785313
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ATTORNEYS FOR DEFENDANT,
NUCOR-YAMATO STEEL COMPANY

Certificate of Service

This to certify that true and correct copies of Defendant Nucor Yamato Steel Company's Original Answer to Plaintiff's First Amended Complaint were served upon Plaintiff by certified mail, return receipt requested, and to the Court by Federal Express on this 17th day of December, 1999, as follows:

Raymon Bledsoe, Sr., pro se
710 Johnson Drive
West Memphis, AK 72301

s/ [illegible]
John K. Linker

Supreme Court, U.S.
FILED
MAY - 7 2002
OFFICE OF THE CLERK

No. 01-1474

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2001

RAYMON BLEDSOE SR.,
Petitioner,
v.

NUCOR-YAMATO STEEL COMPANY,
Respondent.

On Petition For A Writ of Certiorari To The
United States Court of Appeals For the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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Nucor-Yamato Steel Company

Question Presented

Mr. Bledsoe missed the statutory deadline for filing his race discrimination charge. He blamed his omission on the Equal Employment Opportunity Commission. The Eighth Circuit declined to excuse Mr. Bledsoe's delay based on the equitable tolling doctrine because the EEOC correctly informed him of the deadline. Did the Eighth Circuit misapply precedent by holding that the EEOC did not mislead Mr. Bledsoe into missing the filing deadline?

Parties to the Proceeding and Corporate Disclosure Statement

All parties to the proceedings in the United States Court of Appeals for the Eighth Circuit are included in the caption. The Respondent, Nucor-Yamato Steel Company (Limited Partnership), is a division of Nucor Corporation, a publicly held company. The following entities also have a pecuniary interest in the outcome of this case: (a) Nucor-Yamato Holding Corporation; (b) Nucor-Yamato Investment Corporation; (c) Yamato Holding Corporation; (d) Yamato-Kogyo U.S.A. Corporation; (e) Nucor-Yamato Corporation; and (f) Yamato-Kogyo Company Limited. Entities (a) through (f) have some direct or indirect ownership interest in Nucor-Yamato Steel Company (Limited Partnership).

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Statement of the Case

Nucor-Yamato Steel Company ("NYS") employed Mr. Bledsoe for six years at its Blytheville, Arkansas, steel mill. During his employment, Mr. Bledsoe had a history of disciplinary problems, "including insubordination, sleeping on the job and fighting with co-workers." **Appendix A 2a.** As a result of those problems, NYS terminated his employment on July 2, 1998.

About a month after his termination, Mr. Bledsoe contacted the Equal Employment Opportunity Commission by telephone. Mr. Bledsoe filled out a charge information form and provided it to the EEOC but did not file a charge. Months before the charge-filing deadline, an EEOC representative interviewed Mr. Bledsoe by telephone and informed him of his rights under the law and that he had 180 days from his termination to file an administrative charge. Approximately two months before the deadline, Mr. Bledsoe sent a letter to the EEOC office, expressing dissatisfaction with the telephone interview. He did not file a charge and made no further effort to file a charge before the 180 days expired. One month after the deadline passed, Mr. Bledsoe sent another letter to the EEOC. He filed a charge on March 8, 1999, nine months after his termination.

The EEOC issued a right-to-sue letter to Mr. Bledsoe two days after he filed his charge. Mr. Bledsoe then filed

suit *pro se* against NYS in the Eastern District of Arkansas, alleging race discrimination and retaliation under Title VII. Mr. Bledsoe later amended his complaint to add state law claims of defamation and outrage against NYS.

NYS moved for summary judgment based, in part, on Mr. Bledsoe's failure to file a timely EEOC charge. In response to NYS's Motion, Mr. Bledsoe blamed the EEOC for his failure to file a charge within the required time period and sought equitable tolling of the statute of limitations. Mr. Bledsoe placed blame on the Commission even though the Commission had correctly informed him of the deadline and even though he had successfully filed a previous EEOC charge against a different employer. After full briefing, the District Court held that Mr. Bledsoe's Title VII claims were time-barred and that the facts did not justify equitable tolling of the limitations period. **Appendix A 1a-6a.** Because the Court held that Mr. Bledsoe was precluded from bringing a Title VII action, it did not reach the merits of his discrimination and retaliation claims. The Court also entered summary judgment on Mr. Bledsoe's state law tort claims. **Appendix A 6a-7a.**

Mr. Bledsoe appealed to the United States Court of Appeals for the Eighth Circuit on several issues, including the equitable tolling issue. He argued that the District Court erred in failing to apply the equitable tolling

doctrine because the EEOC engaged in positive misconduct. According to Mr. Bledsoe, the Commission's misconduct included improperly transferring his claim to the Memphis EEOC Office, conducting only a ten-minute telephone interview, not promptly responding to his letters, and initially mailing his right-to-sue letter to the wrong address. **Appendix B 11a.**

Mr. Bledsoe did not argue to the District Court or to the Court of Appeals that the information form he completed constituted a charge, that he ever treated it as a charge, or that the EEOC treated it as a charge. Likewise, the record reflects that Mr. Bledsoe has never suggested at any stage of this case that his late-filed charge related back to the information form's transmittal.

After full briefing by the parties, a panel of the United States Court of Appeals for the Eighth Circuit (Morris S. Arnold, Richard S. Arnold, and Kermit E. Bye, Circuit Judges) affirmed the District Court's decision. The Eighth Circuit upheld the District Court's decision on Mr. Bledsoe's Title VII claims, specifically holding that Mr. Bledsoe understood that he had 180 days to file a charge and "nothing approaching affirmative misconduct occurred on the part of the EEOC." **Appendix B 12a-13a.** In due course, the Eighth Circuit denied Mr. Bledsoe's petition for rehearing or rehearing en banc.

Mr. Bledsoe has petitioned this Court for review of the Eighth Circuit's decision on the equitable tolling issue.

As in the District Court and the Court of Appeals, Mr. Bledsoe rests his tolling argument on what he characterizes as "the administrative dereliction of the EEOC." **Petition 3**. And as in those Courts, Mr. Bledsoe makes no argument that his information form was a charge or that his post-deadline charge relates back to some of his earlier contacts with the EEOC.

Mr. Bledsoe also seeks review of the Eighth Circuit's decision on his state law causes of action. Respondent NYS respectfully waives its response on those issues.

The Reasons for Denying the Writ

There are no good reasons to grant certiorari. This case presents no question on which the Courts of Appeals are divided; it involves no conflict between a state and federal court; and it raises no important but unsettled question of federal law. *Compare,* USSCTR 10. Rather, Mr. Bledsoe invokes this Court's supervisory authority, argues that the Eighth Circuit made a mistake in applying its own precedent on equitable tolling, and seeks the writ to correct that error. Mr. Bledsoe's argument boils down to only this: that the Eighth Circuit erred by finding that he was not lulled into inaction by the EEOC and by not citing its earlier decision in *Anderson v. Unisys Corp.*, 47 F.3d 302 (8th Cir. 1995).

Mr. Bledsoe is mistaken. The Eighth Circuit applied the law correctly to the facts of his case. While the Eighth

Circuit did not cite *Unisys*, the panel specifically held that Mr. Bledsoe understood that he had 180 days to file an administrative charge, thus distinguishing Mr. Bledsoe's case from the facts in *Unisys*. **Appendix B 12a**; *Unisys Corp.*, 47 F.3d at 306-07.

Equitable tolling always turns on the facts; no reason exists for this Court to second-guess the fact-bound judgments of the Court of Appeals and the District Court here. Mr. Bledsoe complains, in sum, that the Court of Appeals misapplied the properly stated and settled law of equitable tolling. The Eighth Circuit did not err. But even assuming an error, none of the traditional and important concerns motivating review being present, the Court should not grant the petition for certiorari.

Nor should the Court grant this petition based on its recent decision in *Edelman v. Lynchburg College*, 122 S.Ct. 1145 (2002). Although *Edelman* involved a tolling issue as well, Mr. Bledsoe did not raise that particular issue below, did not preserve it, and did not raise it in this petition. Specifically, he has never argued that he relied on EEOC regulation 29 C.F.R. 1601.12(b), allowing for post-limitations verification of a charge, or argued that the regulation should apply in this case. The issue has not been briefed, and neither the District Court nor the Eighth Circuit considered or decided the issue in this case. Therefore, the *Edelman* issue is not before this Court.

For all these reasons, the Court should deny Mr. Bledsoe's petition.

1. The Law Of Equitable Tolling Is Settled And Mr. Bledsoe Does Not Ask This Court To Revisit It.

Mr. Bledsoe petitions this Court for certiorari arguing that the Eighth Circuit made a mistake in applying equitable tolling principles and precedents to his case. He does not argue that this Court needs to clarify the law of equitable tolling. No such need exists. That law is clear. *Baldwin Co. Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982). Taken at its best, then, Mr. Bledsoe's petition asks this Court to correct a Court of Appeals' error in applying the law. There was no such error below. But even if there had been, this Court has more important matters on which to spend its limited resources.

2. The Eighth Circuit Followed The Settled Law Of Equitable Tolling In Rejecting Mr. Bledsoe's Invocation Of That Law.

There has never been any question in this case that Mr. Bledsoe failed to file an EEOC charge within 180 days of the last alleged act of discrimination. He also admitted that the EEOC informed him of his rights and the 180-day statute of limitations. **Appendix A 5a, O 80a.** Further, he was familiar with the charge-filing procedure because he had filed an EEOC charge against a former employer. Mr. Bledsoe argues, however, that because the

EEOC did not respond to a letter he sent 60 days before the deadline passed, his mistake should be excused.

Therefore, the petition presents only one question: whether, under the particular facts of this case, the doctrine of equitable tolling excuses Mr. Bledsoe's lack of diligence. The Eighth Circuit correctly answered "no" to that question.

In so holding, the Court of Appeals followed this Court's decision in *Baldwin*. See Eighth Circuit's opinion below citing *Shempert v. Harwick Chemical Corp.*, 151 F.3d 793, 798 (8th Cir. 1998), *cert. denied*, 525 U.S. 1139 (1999), and omitting citation to *Baldwin*. **Appendix A 12a.** Mr. Bledsoe fails to address the *Baldwin* case in his petition. In that case, this Court laid down the background principles of diligence that guide the equitable tolling inquiry. "One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence." *Baldwin*, 466 U.S. at 151. This Court was clear, moreover, that sympathy does not trump the need for diligence. "Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Id.* at 152.

In Baldwin, the Court listed the circumstances in which equitable tolling typically applies: when the claimant receives inadequate notice; where a motion for appointment of counsel is pending; when the court has led a plaintiff to believe that he or she has done everything

required of him or her; or where affirmative misconduct on the part of the defendant lulled the plaintiff into inaction. 466 U.S. at 151.

As the Eighth Circuit correctly observed, this case presents none of those situations. Rather than lead Mr. Bledsoe to believe that he had done everything required, the EEOC instead informed him that he had 180 days to file a charge. And despite Mr. Bledsoe's assertions, the Commission did not engage in affirmative misconduct. The District Court and the Court of Appeals thoroughly considered his misplaced allegations and rejected them. **Appendix A 6a, B 12a-13a.**

Mr. Bledsoe also contends that the Eighth Circuit's decision is contrary to its prior holding in *Anderson v. Unisys Corp.*, 47 F.3d at 306-07, but he ignores key factual distinctions between his case and *Unisys*. The plaintiff in *Unisys* relied on a letter from the state human rights agency, which said that he had one year to file a state discrimination complaint, but made no mention of the 300-day limitation period to file an EEOC charge. The Eighth Circuit found that the letter contained sufficiently "ambiguous and misleading language" to equitably toll the limitations period. 47 F.3d at 307.

Mr. Bledsoe, on the other hand, was never misled about the statute of limitations. The EEOC representative personally informed him that he had 180 days to file a charge – there was no ambiguity in that. Further, he knew his rights and the EEOC process, having filed an EEOC charge against a former employer. Under these

circumstances, the Eighth Circuit was correct in placing the responsibility for the failure to file a charge on Mr. Bledsoe's shoulders.

Mr. Bledsoe also argues that the Court of Appeals did not follow this Court's decision in *Zipes* that Title VII's timely filing requirement is not jurisdictional but is subject to equitable tolling. 455 U.S. at 393. Of course that is the law. But Mr. Bledsoe reads too much into that exception. As *Baldwin* made plain, *Zipes* did not mean that the timeliness requirement need never be satisfied, only that it was subject to waiver and tolling. *Baldwin*, 466 U.S. at 152 n.6. The Eighth Circuit considered Mr. Bledsoe's argument for equitable tolling under all the circumstances and rejected that argument. The Eighth Circuit's decision follows *Zipes* and *Baldwin* faithfully.

3. Mr. Bledsoe Has Never Argued Relation Back And That Issue Is Not Before The Court In This Case.

The Court should not grant Mr. Bledsoe's petition based on its recent decision in *Edelman v. Lynchburg College*, 122 S.Ct. 1145 (2002). Mr. Bledsoe has never argued that his untimely EEOC Charge should relate back to the information form he submitted to the EEOC. He has never never relied on EEOC regulation 29 C.F.R. 1601.12(b), which allows for post-limitations verification of a charge, and he has never asserted or argued that the regulation should apply in this case. This is evident from the fact

that he cites neither the regulation nor the *Edelman* decision in his petition. Further, the relation-back issue has never been briefed in this case, and neither the District Court nor the Eighth Circuit considered or decided it. Therefore, the *Edelman* issue is not before this Court, and the record will not support certiorari on that basis.

Nor does the Court of Appeals' reliance on *Shempert v. Harwick Chemical Corp.*, 151 F.3d 793, in this case raise an *Edelman* issue. While relying in part on *Shempert* in rejecting Mr. Bledsoe's equitable tolling argument, the Court of Appeals did not rely on the part of *Shempert* that this Court overturned in *Edelman*. *Compare Shempert*, 151 F.3d at 796-97, *with Edelman*, 122 S.Ct. at 1148-49 n.4.

Shempert presented two distinct issues: relation back under 29 C.F.R. 1601.12(b) and equitable tolling based on the EEOC's conduct. *Edelman* addressed only the first issue. But the EEOC-conduct part of *Shempert* -- on which the Eighth Circuit relied in this case -- remains good law. *See Shempert*, 151 F.3d at 797-78.

Mr. Bledsoe's petition is clear on what he believes this case is about: "the administrative dereliction of the EEOC[,]" and a series of events that "led Mr. Bledsoe to believe that an obstruction of justice had been committed by the EEOC." **Petition 3, 8.** Hence this case presents issues about the application of the settled law of equitable tolling to particular facts; it does not present any *Edelman* issue.

Conclusion

This Court should deny Mr. Bledsoe's Petition.

Respectfully submitted,

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